



**Arbitration CAS 2016/A/4745 Russian Paralympic Committee (RPC) v. International Paralympic Committee (IPC), award of 30 August 2016 (operative part of 23 August 2016)**

Panel: The Hon. Annabelle Bennett (Australia), President; Mr Efraim Barak (Israel); Prof. Ulrich Haas (Germany)

*Paralympics*

*Validity of an IPC's decision to suspend a member organization*

*Failure of the national Paralympic Committee to comply with its anti-doping obligations*

*Regularity of the disciplinary process leading to a membership suspension*

*Proportionality of the suspension from membership of a national organization*

*Strict liability*

- 1. The International Paralympic Committee (IPC) Constitution and IPC Anti-Doping Code make compliance with the obligation to pursue all potential anti-doping rule violations within its jurisdiction and to investigate cases of doping a condition of each National Paralympic Committee (NPC)'s membership of the IPC. On a national level and within the structure of the IPC as stipulated in the IPC Constitution, a NPC is the responsible entity having the obligation to the IPC as well as to the IPCs' members to ensure that no violations of the anti-doping system occur within the country. The existence of a State doping system as described in a report commissioned by the World Anti-Doping Authority (WADA) means that the relevant NPC breached its obligations and conditions of membership of the IPC.**
- 2. The disciplinary process leading to an IPC member's suspension may have difficulty of application in circumstances where the deadlines are imposed upon the parties by external parties and external circumstances i.e. the imminent commencement of the Paralympic Games and the magnitude of the deficiencies to be remedied by the NPC. However, a notification letter regarding formal opening of IPC membership suspension proceedings shall be considered as an "official warning" compliant with the applicable requirements. Further, by entering into an arbitration agreement, the parties can answer the practical difficulties arising in these unusual circumstances and therefore agree upon a proceeding which is different to that provided in the IPC applicable disciplinary process. Moreover, the fact to also agree within the framework of such an agreed "taylor made" legal mechanism, that in accordance with the IPC Policy on Suspension of IPC Member Organisations, the IPC provided the NPC with a full opportunity to present its case to the IPC, both in writing and in person, excludes any failure to comply with the applicable procedural provisions.**
- 3. An international federation may, in appropriate circumstances and in accordance with its Rules, suspend without reservation, or alleviation of the consequences to the athletes, a member federation based on a breach of its Anti-Doping Policy and based**

on reliable information, as long as such decision is within its power, has a proper legislative basis and is not irrational, or perverse, or outside the margin of discretion open to it. It must also serve a legitimate purpose and is suitable, necessary and appropriate for the objective which it aims to achieve. The suspension of the member federation is a means of restoring a level playing field and is, in addition, a powerful tool to provoke behavioural change within the member federation's sphere of influence. Also, it is also a powerful message to restore public confidence. In the absence of submission of an alternative measure that would, comparably and effectively, be suited to achieve the goals pursued, it must be concluded that the decision is proportionate.

4. Under German law as well as Swiss association law, a sanction issued by an association against one of its members does not necessarily require that the member violated its obligation with fault.

## **I. PARTIES**

1. The National Paralympic Committee of Russia (the "RPC" or "Appellant") is the national Paralympic committee representing the Russian Federation. Its members are Russian sports and physical fitness organisations registered as legal entities, other legally registered Russian public-interest organisations and citizens of the Russian Federation. The RPC is a member of the International Paralympic Committee.
2. The International Paralympic Committee (the "IPC" or the "Respondent") is the global governing body of the Paralympic Movement. Its purpose is to organise the summer and winter Paralympic Games and act as the International Federation for nine sports, supervising and coordinating World Championships and other competitions. Unlike the International Olympic Committee (IOC), the IPC's members include the national Paralympic committees (NPCs), Organisations of Sport for the Disabled, International Paralympic sports federations (IFs) and regional Paralympic organisations.
3. The IPC also acts as the IF for ten Paralympic sports in which it is responsible for the governance of the sport and for conducting and supervising World Championships and other competitions. The NPCs act as national federations for Paralympic sports, as well as acting as the umbrella national authorities for all Paralympic sports.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts,

allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 18 July 2016, the report commissioned by the World Anti-Doping Authority (WADA) from Professor Richard McLaren as the Independent Person was released (the “IP Report”). In the IP Report, Professor McLaren and his team reported that they had identified and verified evidence that led them to conclude beyond reasonable doubt that the Russian Government had developed, implemented and controlled a State-run doping program over a period from at least late 2011 until August 2015. The report also stated that Russian athletes from Paralympic sport benefitted from this program.
6. By letter dated 22 July 2016, the IPC notified the RPC that it had opened suspension proceedings against it, based on a list of seven, non-exhaustive facts that it believed were established according to the IP Report (the “Letter”).
7. By letter dated 28 July 2016, the IPC – *inter alia* – requested the agreement of the RPC to appoint the CAS as the Appeal Panel described in Article 3.3.2.4 of the IPC Policy of Suspension of Member Organisations.
8. By letter dated the same day, the RPC informed the IPC that it wished to be heard in person by the Governing Board (“GB”) of the IPC and informed the IPC of the names of its delegation. Furthermore, the letter stated that “[a]s for the appeal procedure including our agreement to appoint Appeal Panel, we consider it is early now to discuss these issues while IPC GB decision on the suspension proceedings is not known”.
9. By letter dated 29 July 2016, the RPC commented and objected to the seven, non-exhaustive list of facts mentioned in the IPC letter dated 22 July 2016.
10. In its letter dated 1 August 2016, the IPC acknowledged receipt of the RPC’s letter dated 29 July 2016. Furthermore, the 1 August 2016 letter states – *inter alia* – as follows:

*Having considered the contents of your submission, the GB would like now to pose several follow-up questions for your consideration. Answers to these questions, we believe, will prove helpful to our comprehensive analysis. If the RPC cannot provide us with answers to these questions prior to your delegation’s arrival in Bonn, Germany this week, we would ask that you be prepared to answer these questions during your scheduled presentation. ...*

*1. Does the RPC accept the facts reported on by McLaren, either in whole or in part? If the RPC does not accept any of the facts or conclusions presented in the McLaren Report, will you please list them?*

*2. Is it the RPC’s position that it has no knowledge whatsoever of the matters set out in the McLaren Report or in the data presented herein, including any doping programme for top Russian Para athletes, the disappearing positives and the sample swapping scheme?*

*3. If the RPC claims it had no knowledge whatsoever of these matters, and if the RPC was not helping to coordinate the doping scheme, then who was coordinating it and how? For example, who arranged for clean urine to be collected from Para athletes in advance of the Sochi 2014 Winter Paralympic Games (and how), and who*

*told Paralympic athletes how to make sure that their samples could be identified (e.g. by sending in a picture to the DCF)? How was NPC Russia unaware of all this?*

*4. In response to the DPM and SSM data described herein, how can the RPC reasonably state that it disagrees that it is unable to ensure effective control over compliance with the anti-doping code in its territory?*

*5. In the RPC's response letter, you indicate that four impairment-based Russian National Sport Federations are responsible for anti-doping provisions of Paraathletes. As the IPC's member with sole responsibility for Para sport in Russia, please clarify what you mean by this statement. For example, are you saying that the RPC is not responsible to ensure doping free Para sport in Russia and that the responsibility for enforcing the IPC anti-doping code lies elsewhere (i.e. with the four named Federations)?*

*6. While the IPC applauds the RPC's commitment to anti-doping education, what is the reason for the gap in education courses between 13 November 2015 and August 2016 (just one month prior to the Rio 2016 Paralympic Games)?*

11. By letter dated 3 August 2016, the RPC provided its answers to the follow-up questions posed by the IPC on 1 August 2016.
12. On 3 August 2016, a seven-person delegation from the RPC visited the IPC's headquarters to present its case in person. Twelve of the 15 IPC GB members participated in the meeting.
13. After a further exchange of emails between the parties and after sending the RPC a warning, as well as hearing the RPC in writing and orally, the IPC, on 7 August 2016, suspended the membership of the RPC with immediate effect due to its asserted inability to fulfil its IPC membership responsibilities and obligations, in particular its obligation to comply with the IPC Anti-Doping Code and the World Anti-Doping Code (the "WADA Code") (the "Decision"). As a consequence of that suspension, by the application of article 9.6 of the IPC Constitution, the RPC could not enter athletes in competitions sanctioned by the IPC, relevantly, the upcoming Paralympic Games in Rio.
14. On 11 August 2016, the parties entered into a written "Arbitration Agreement", signed on behalf of the parties. The Arbitration Agreement provided – *inter alia* – for a procedural timetable and a CAS Panel constituted as follows: Dr. Ulrich Haas (nominated by the IPC); Mr. Efraim Barak (nominated by the RPC) and "a President, to be appointed by CAS pursuant to Article R54 of the CAS Code".

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

15. On 15 August 2016, the Appellant filed an expedited Statement of Appeal serving as its Appeal Brief with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 *et seq.* of the Code of Sports-related Arbitration (the "Code").

16. On 18 August 2016, upon the agreement of the parties and the direction of the President of the Appeals Arbitration Division in accordance with Article R54 of the Code, the Panel appointed to decide this appeal was constituted as follows:

President: The Hon. Dr. Annabelle Bennett A.O. S.C., Barrister in Sydney, Australia

Arbitrators: Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel

Dr. Ulrich Haas, Professor, Zurich, Switzerland

17. On 19 August 2016, the Respondent filed its Answer in accordance with R55 of the Code.
18. A hearing was held in Rio de Janeiro, Brazil on 22 August 2016. The Panel was assisted by Mr. Brent J. Nowicki, Counsel to the CAS, and was joined by the following:

For the Appellant: Mr. Lucien Valloni and Mr. Dmitry A. Pentsov (counsel), as well as the following representatives of the RPC: Vladimir Lukin (President), M. Naialiya, H. Isenofontov, P. Rozhkov, V. Potapova, G. Idrisova, E. Gorlova, V. Goforinskii, D. Kokorev, V. Morozov, and A. Prokhorenko. The RPC also presented the following witnesses: Ms. Elena Gorlova, Mr. Dmitry Kokorev, and Ms. Victoria Potapova.

For the Respondent: Mr. Jonathan Taylor, Mr. James Bunting, and Mr. Carlos Sayao (counsel), as well as the following representatives of the IPC: Sir Philip Craven (President) and Mr. Andrew Parsons (Vice President).

19. At the inception of the hearing, the parties confirmed that they had no objection to the constitution of the Panel or the manner in which the procedure had been handled. Moreover, the Appellant withdrew its request that the Panel order – to the extent it had such power – the Respondent, WADA and the McLaren investigation team to produce certain documents supporting the McLaren Report. It accepted that the Respondent had complied with the order sought.
20. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

21. The parties' submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.
22. In its Statement of Appeal/Appeal Brief, the Appellant filed the following prayers of relief:

##### ***1) Preliminary***

*1. To order the Respondent and the McLaren investigation team as well as WADA to immediately file all materials and proofs that were used to compile the McLaren report but were not made available to Appellant*

*and do not form part of this file, as, for example, any kind of proof that the RPC board members or any kind of the RPC officials had any knowledge of the alleged doping system in Russia;*

*2. To hear as witnesses Ms. Elena Gorlova, Mr. Dmitry Kokorev and Ms. Victoria Potapova*

**2) Principally**

*1. To annul the Decision of the Governing Board of the IPC regarding Member Suspension Proceedings for the RPC, dated August 7, 2016;*

*2. To order the IPC to enter the Russian para-athletes to the Paralympic Games to be held in Rio de Janeiro (Brazil) in September of 2016;*

*3. In case clause 1 above is rejected, to issue a less severe sanction which still allows the RPC to enter the Russian para-athletes to the Paralympic Games to be held in Rio de Janeiro (Brazil) in September 2016;*

*4. In case clauses 1 and 3 are rejected, to issue a less severe sanction which still allows the RPC to enter Russian para-athletes that are not mentioned at all in the McLaren Report and especially all para-athletes who have been tested in 2016 by UKAD or any other non-Russian Doping Organization during 2016 without any positive doping result;*

*5. To order the IPC to pay all costs relating to the present arbitration proceedings, including, but not limited to, the CAS fees, arbitrators' fees, as well as the fees and expenses of the RPC's witnesses and the RPC's attorneys, as well as disbursements;*

*6. To reject all prayers of relief of the IPC.*

23. In its submission, the RPC requested the Panel “*to order the Respondent and the McLaren investigation team as well as WADA to immediately file all materials and proofs that were used to compile the McLaren report but were not made available to Appellant and do not form part of this file, as, for example, any kind of proof that the RPC board members or any kind of the RPC officials had any knowledge of the alleged doping system in Russia*”. In addition, the Appellant requested under 2.3 (“*In case clause 1 above is rejected, to issue a less severe sanction which still allows the RPC to enter the Russian para-athletes to the Paralympic Games to be held in Rio de Janeiro (Brazil) in September 2016*”). However the RPC waived this request stating that in its opinion that the relief under 2.1 is sufficient.

24. In its Answer, the Respondent filed the following prayers for relief:

*[T]o dismiss the appeal, and confirm the validity of the IPC Governing Board's decision of 7 August 2016 to suspend the membership of the RPC with the consequent ineligibility of Russian para athletes to compete in competitions sanctioned by the IPC, including the 2016 Paralympic Games, until the RPC demonstrates that it is ready, willing and able to discharge its anti-doping responsibilities. ...*

*that the RPC be ordered to pay the CAS arbitration costs and the IPC's legal fees and other expenses in this matter. ... [and]*

*to grant the IPC such other and further relief as the CAS Panel sees fit.*

## V. JURISDICTION

25. Article R47 of the Code provides as follows:

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

26. As set forth above, on 7 August 2016, the IPC Governing Board issued its Decision. In accordance with Article 3.3.1 of the IPC Policy on Suspension of an IPC Member Organization, an IPC member has the right to appeal a decision to suspend it from membership to a three-member appeal panel established by the IPC President.

27. However, considering the need to resolve the RPC's appeal prior to the 2016 Paralympic Games, the parties entered into the Arbitration Agreement granting jurisdiction to the CAS to decide this dispute. Section 1 of the Arbitration Agreement provides as follows:

1. *The RPC's appeal of the Decision shall be finally adjudicated by a three member arbitral tribunal pursuant to Articles R47 et seq of the Code of Sports-related Arbitration (CAS Code) according to the expedited procedure within the meaning of Article R52 of the CAS Code. In that respect, for purposes of CAS Code Articles R37 and R47, it is agreed that the RPC is deemed to have exhausted all legal remedies otherwise available to it under the applicable IPC rules (in particular its right to appeal under Article 3.3.1 of the OPC Policy on Suspension of the IPC Member Organization).*

28. The parties reconfirmed their consent to CAS jurisdiction at the start of the hearing.

29. It follows, therefore, that the CAS has jurisdiction to decide the present dispute between the parties.

## VI. APPLICABLE LAW

30. Article R58 of the Code provides as follows:

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

31. In Section 4 of the Arbitration Agreement, the parties agreed as follows:

4. *Pursuant to Article R58 of the CAS Code, the CAS Panel will decide the dispute according to the applicable regulations (including, without limitation, the IPC Constitution, the IPC Bylaws and the IPC Policy on Suspension of an IPC Member Organisation) and, subsidiarily, to Swiss law (save for specific issues on the*

*interpretation of the relevant governing documentation where, in the opinion of the Panel, it is more appropriate and natural to defer to the position under German Law; being the law that governs the establishment of the IPC and gives it legal personality).*

32. Section 4 complies with Article 187 para.1 of the Swiss Private International Law Act (“PIL”), where the traditional principle of the freedom of the parties to choose the law that the arbitral tribunal has to apply to the merits of the dispute is fully recognised. (*see also* KAUFMANN-KOHLER/RIGOZZI, Arbitrage International. Droit et pratique à la lumière de la LDIP, 2<sup>nd</sup> ed., Berne 2010, p. 400).
33. In recognition of Article R58 of the Code and Article 187 para.1 of the PIL, the Panel has no reason to deviate from the will of the parties and, unless otherwise noted, applies such law when deciding this dispute as set forth above accordingly.

## **VII. MERITS**

34. Under Art. 3.3.1 of the IPC Policy of Suspension of Member Organisations and Under Art. 3.7 of the Constitution, the Decision may be appealed. The RPC decided to appeal the Decision.

### **A. The Legal Framework**

35. Under clauses 9.2.2 and 9.3 of the IPC Constitution, a member may be suspended by the IPC Governing Council for failing to fulfil its obligations as a member as defined in the IPC Constitution.
36. Amongst others, a member’s obligations include the following:

*2.1.1 Respect and abide by the IPC Constitution, the IPC bylaws, codes, rules, regulations and any other decisions taken by the IPC General Assembly and the IPC Governing Board; in particular to comply with the World Anti-Doping Code, the IPC Classification Code, and the IPC Medical Code.*

*2.1.2 Contribute to the development of the vision, mission, objects, purposes and goals outlined in the IPC Constitution.*

*\*\*\**

*2.2.6 Ensure that, in sport practiced within the Paralympic Movement, the spirit of fair play prevails, violence is banned, the health risk of the athletes is managed and fundamental ethical principles are upheld;*

*2.2.7 Contribute to the creation of a drug-free sport environment for all Paralympic athletes in conjunction with the World Anti-Doping Agency (WADA)*

**B. The Issues**

37. The parties have filed detailed submissions and also presented evidence. At the hearing, the parties agreed that the issues can be considered under the following headings:
- A. Whether there has been a violation of the RPCs membership obligations;
  - B. Whether the IPC complied with the correct procedures as set out in art. 1 of the Policy to effect the suspension of the RPC; and
  - C. Whether the decision to suspend the RPC, with the consequential effect on Russian Paralympic athletes, was proportionate.
- a) *Did the RPC fail to comply with its membership obligations?*
- aa) The findings of the IP Report
38. The Decision followed the publication of the IP Report.
- (i) The challenge made
39. The first challenge by the RPC was to the IP Report itself, which it said that it “*contested in full*” and to the weight that it should be accorded. The RPC also emphasised that there was no conclusion expressed in the IP Report as to any involvement by the RPC in the State-sponsored system of doping therein described.
- (ii) Consideration by the Panel
40. In its Statement of Appeal/Appeal Brief, the RPC sought, by preliminary order, that the IPC, “*the McLaren investigation team*” and WADA file all materials and proofs used to compile the IP Report, in particular “*any kind of proof that the RPC board members or any kind of RPC officials had any knowledge of the alleged doping system in Russia*”. The RPC accepted that the IPC had complied, to the extent that it had such documentation.
41. As referred to above, it was pointed out at the hearing that neither Professor McLaren, nor his team, nor WADA were parties to the Arbitration Agreement or to the proceeding. No adjournment was sought to attempt to join them. The RPC accepted that the Panel had no jurisdiction to issue an order addressed to the external parties, Professor McLaren and WADA, and withdrew the request for the preliminary order as against them.
42. Professor McLaren did provide a sworn affidavit in this proceeding (the “McLaren affidavit”). Prior to the hearing, the parties were directed to notify the other party if any evidence was to be the subject of cross-examination. No witness was required for cross-examination and the

parties were informed that if there were no cross-examination, a witness's evidence would stand unchallenged, although observations could be made as to the effect and weight of such evidence.

43. While the IP Report did not refer to any particular athlete, the McLaren affidavit included evidence not present in the IP Report. The RPC made submissions as to the McLaren affidavit, including that it was “*not proven*” and that it was “*one-sided*”. However, such challenges are not substantiated. According to Swiss procedural law, a valid contestation of facts needs to be specific, i.e. it must be directed and attributable to an individual fact submitted by the party bearing the burden of proof (ATF 117 II 113, E. 2; ATF 115 II 1, E. 4; see also SFT 4A\_299/2015, E. 2.3; DIKE-ZPO/LEU, 2011, Art 150 no 59). The challenges made by the Appellant are generic in nature and do not meet this threshold. Furthermore, Professor McLaren's evidence was given by sworn affidavit. The RPC decided not to cross-examine him although given the opportunity to do so and the RPC called no evidence to rebut his evidence. Thus, Professor McLaren's evidence stands uncontradicted.
44. The RPC called three athletes who wish to compete in the Paralympic Games in Rio, who had provided written statements, to give oral evidence. None of this testimony was directed against the findings of the IP Report or the findings contained in the McLaren affidavit. None of the witnesses were cross-examined. The RPC did not call any athlete named by Professor McLaren as having been subject to the system he described.
45. In the McLaren affidavit, Professor McLaren repeats what he described as the “Key Findings” of the IP Report, made beyond reasonable doubt:
  1. *The Moscow Laboratory operated, for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*
  2. *The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian athletes to compete at the Games.*
  3. *The Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both Moscow and Sochi Laboratories.*
46. He says that he had been asked to focus on the evidence in the IP Report which “*establishes that the doping cover up described in the [IP Report] was State-directed*”. Professor McLaren says that he did not seek to meet with Russian government officials. He says that he did receive, unsolicited, an extensive narrative, with attachments, from “*one important government representative*” but that in the time available to him, it was not practical to interview that person. It is not clear from the McLaren affidavit, if Professor McLaren read that narrative. Professor McLaren relied on evidence from Dr Rodchenkov and other witnesses which was, he says, consistently corroborated by contemporaneous electronic data and forensic and analytical evidence.
47. Professor McLaren describes what he has called the “Disappearing Positive Methodology” as used in the Moscow Laboratory. It is not necessary to repeat all of the evidence here. That

methodology has been described in other cases of the *ad hoc* Division of the CAS for the Games of the XXXI Olympiad in Rio de Janeiro. According to the IP Report, the primary participants in the State-sponsored program of doping and of concealing that doping included the Ministry of Sport, RUSADA, the Centre of Sports Preparation of National Teams of Russia, the Moscow and Sochi Laboratories and the Federal Security Service of the Russian Federation (FSB).

48. He says that, so far, his investigation has found electronic data identifying 44 samples from Russian Paralympic athletes where athlete profiles were sent for a decision as to SAVE (where no further analytical work was done and the sample was reported negative despite a likely adverse analytical finding) or QUARANTINE (analytical work would continue as normal). The IP Report states that the Disappearing Positive Methodology was utilised across a range of 26 Paralympic sports.

49. Professor McLaren states:

*Based upon my review of the electronic data in the IP's possession, I can state with confidence beyond a reasonable doubt that Russian Paralympic athletes were included in the same Disappearing Positive Methodology system as able-bodied Russian athletes and were treated in exactly the same way by the [Ministry of Sport] MoFS as were the able-bodied Russian athletes. The Athlete Profiles of Paralympic athletes were combined with able bodied Athlete Profiles in the same communication and transmitted up to the MoFS and came back down to the Laboratory with a SAVE or QUARANTINE order using the same Liaison person and in the same manner as the Athlete Profiles of able-bodied athletes. In many cases, samples for Paralympic athletes and able-bodied athletes were listed in the same Laboratory report of positive A sample screen results going to the MoFS. Similarly, there were instances where the MoFS's reply, with individual orders to SAVE or QUARANTINE an athlete, listed a mix of able-bodied and Paralympic athletes. The only difference in the application of the Disappearing Positive Methodology to the two types of athletes, which I would note from my review of the electronic data, is that a lower percentage of Paralympic athletes were ordered "SAVE".*

50. He then sets out a summary of electronic evidence showing the application of the Disappearing Positive Methodology and instructions to SAVE to seven Paralympic athletes.

51. Professor McLaren explains that a different methodology was used by the Sochi Laboratory and that this also involved the FSB. This methodology involved opening selected Russian athletes' sample bottles and swapping out dirty urine with clean urine. He says that samples that bore marks that were consistent with tampering included those from the Sochi Paralympics. He recounted evidence from Dr Rodchenkov that he recalled swapping samples of 4 different Russian Paralympic athletes and that it "*was very likely*" that he swapped samples for two others.

52. Professor McLaren reports that a forensic examination of 21 samples from seven different Russian Paralympic athletes showed 18 sample caps found "*to have tamper marks similar to those found on the Sochi Olympic Games samples*". He concludes that "*the scratches and marks evident on these samples clearly establish the application of State-directed Sochi sample swapping scheme to the Sochi Paralympics*".

53. He sets out what he calls “the Command Structure” and names the Ministry of Sport of the Russian Federation (and certain personnel) and the FSB (and certain personnel). He does not name the RPC or any board member of the RPC.
- ab) The Consequences from the IP Report
- (i) No proof of complicity or involvement
54. The IPC invited the Panel to conclude that the RPC and its Board Members were involved in, or complicit in, or knew of the existence of State sponsored doping of athletes and the methodologies as set out in the IP Report. The only evidence adduced to support such a finding was the fact that certain IPC Board Members hold positions in the Russian government and that organs of the Russian government were involved. The RPC pointed out the difficulties of proving such a negative fact.
55. The Panel cannot draw the proffered conclusion. There is no evidence to establish such knowledge. There is an insufficient basis to draw an inference to that effect.
- (ii) Responsibility for non-compliance
56. It is undisputed that the RPC accepted the obligations imposed on it as a member of the IPC. The IPC Rules provide for suspension based on breach of membership obligations. Those obligations include the specific obligation under Article 20.1 of the WADA Code to adopt and implement anti-doping policies and rules for the Paralympic Games which conform with the WADA Code.
57. The RPC says that there is no proof in the IPC Decision “*that any person with a function within RPC, including the board members of the RPC, was aware **or could have been aware** of any wrongdoing in relation to the doping scheme allegation*” (emphasis added).
58. The RPC also submits, in summary:
- There is no proof as to why the RPC should not have been allowed to trust RUSADA and other organisations in Russia which were responsible for “*the fight against doping*”. It points out that WADA is responsible for monitoring RUSADA.
  - The RPC is not the controlling organisation of these bodies or of the Moscow Laboratory. Rather, WADA has a duty to monitor RUSADA and to monitor failure to comply with WADA procedures, such as difficulties in collecting athletes’ urine, cited in the Decision.
  - The RPC did not, and could not, have had prior knowledge of the allegations in the Decision and the IP Report.
  - The RPC cannot be held responsible for the acts or omissions of third persons mentioned in the IP Report who were neither managed nor influenced by the RPC.

59. However, the obligation vigorously to pursue all potential anti-doping rule violations within its jurisdiction and to investigate cases of doping (Article 20.4.10), are not passive. The IPC Constitution and IPC Anti-Doping Code make compliance with those obligations a condition of each NPC's membership of the IPC. These are positive obligations to ensure compliance. Indeed, the RPC's constitution recognises the obligation to ensure the spirit of fair play, to promote the creation of drug-free sport together with WADA, to maintain compliance with the IPC Handbook and to implement the WADA Code so as to ensure compliance with the domestic anti-doping policy and rules.
60. These obligations are those of the RPC and remain so within its jurisdiction, whether or not there is delegation to other bodies such as RUSADA, the accredited WADA laboratory or WADA itself as the world-wide international organisation responsible for fighting doping. Still, on a national level and within the structure of the IPC as stipulated in the Constitution, the RPC is the responsible entity having the obligation to the IPC as well as to the IPCs' members to ensure that no violations of the anti-doping system occur within Russia. The existence of the system as described in the IP Report and in the McLaren affidavit means that the RPC breached its obligations and conditions of membership of the IPC.
- b) *Did the IPC comply with the procedures for suspension under the IPC Constitution?*
- ba) The challenge made
61. The RPC asserts that it was not given due warning as provided under Article 3.1.2.1 of the IPC Policy on Suspension of IPC Member Organisations (the "Suspension Policy").
- bb) Consideration by the Panel
62. In the Arbitration Agreement entered into for the purpose of this proceeding, the parties agreed that, in accordance with the Suspension Policy, the IPC had provided the RPC with a full opportunity to present its case to the IPC, both in writing and in person.
63. On 22 July 2016, the IPC sent the Letter to the RPC entitled: Notice regarding formal opening of IPC membership suspension proceedings against the Russian Paralympic Committee. It states - *inter alia* - that the IPC accepts "*the veracity of the content and the conclusions*" of the IP Report and that the effect of the matters from that report which were enumerated, is that:
- [T]he RPC is operating in a territory where there is no effective anti-doping process. On the contrary, authorities who should be engaged in preventing doping in sport are, in fact, promoting the use of prohibited substances and prohibited methods in egregious violation of their responsibilities. As a consequence, there seems to be no possibility under these circumstances for the RPC to carry out its own anti-doping obligations towards the IPC.*

64. The Letter recited the provisions of the Suspension Policy and in particular Articles 3.1.2, 3.1.2.2 and 3.1.2.3, which provided for an official warning to be given prior to suspension and an opportunity to be heard. The Letter clearly recognised that an official warning must be given prior to suspension and that such formal notification must include a deadline by which the member still has the possibility to correct its status. The Letter then stated that the IPC Governing Board did not believe that the RPC would be able to remedy matters “*within a meaningful timeframe*”, being prior to the commencement of the Rio 2016 Paralympic Games, but gave the RPC until 28 July 2016 to “*correct the deficiency*” identified, being matters summarised from the IP Report.
65. The Letter also made reference to the mandated opportunity to be heard, which was subsequently utilised by the RPC.
66. As the IPC pointed out, there is no requirement under Article 3.1.2.1 of the IPC Suspension Policy to provide two separate notifications. Rather, the notification letter was the “official warning”, and it complied with the requirements of Article 3.1.2.1.
67. The RPC says that 6 days to remedy the matters subject to the allegations set out in the Decision was so inadequate as to be unreasonable and not given in good faith. Additionally, it says that it could not rebut the allegations or remedy the problems without further details and proofs and the material available to Professor McLaren.
68. However, the IPC did not dictate the timeline. The IP Report was issued on 18 July 2016. The same day, the IPC contacted Professor McLaren to ask for further information. Four days later, the IPC sent the RPC formal notification regarding the opening of suspension proceedings. The Panel accepts the IPC’s submission that it could not have reacted more quickly in view of the internal deliberations that occurred before a decision was made to suspend the RPC. The Panel also accepts that it was obvious that the RPC could not correct a situation of the magnitude described in the IP Report in time for the Rio Paralympic Games. When the RPC responded to the IPC letter, it did not establish that it could do so.
69. The RPC also had the opportunity before this Panel to provide evidence and to make a case against the Decision to suspend it. This hearing before CAS is – in light of Article R57 Code – a hearing *de novo*. According to constant CAS jurisprudence, the effect of such a *de novo* hearing is that procedural flaws which occurred in a lower instance are cured before the CAS, since the latter completely re-hears the dispute (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Alphen aan den Rijn 2015, Art. 57 no. 12 et seq., 24 et seq.; 30). As a result, possible deficiencies – such as denial of justice, or procedural irregularities – are unfortunate but without any effect in light of the *de novo* decision of the CAS (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Alphen aan den Rijn 2015, Art. 57 no. 24 et seq. with reference to CAS 2011/A/2343, no. 48 and no. 30 with reference to CAS 2006/A/1153, para. 54; CAS 2008/A/1480, no. 71).
70. The RPC points out that Article 1 of the Suspension Policy provides that the IPC will “*proactively work with the individual member organisation*” to achieve compliance with IPC Rules and that

suspension will be considered only when no progress is made despite these efforts. The IPC responds that it did so by providing to the RPC all information received from Professor McLaren that it was permitted to disclose as it was received and then inviting the RPC to respond, which it did as accepted in the Arbitration Agreement. In the circumstances, the IPC complied with this provision.

71. Further, the Panel notes the deadlines imposed upon the parties by external parties and external circumstances. The parties have, in effect, recognised that the Suspension Policy has difficulty of application in circumstances such as the present and have entered into the Arbitration Agreement, which answers the practical difficulties arising in these unusual circumstances. The Parties have therefore agreed upon a proceeding which is different to that provided in the Constitution and the Suspension Policy. Within the framework of such, an agreed “tailor made” legal mechanism, the parties have also agreed that: *“in accordance with the IPC Policy on Suspension of IPC Member Organisations (the “Suspension Policy”), the IPC provided the RPC with a full opportunity to present its case to the IPC, both in writing and in person”*.

72. It follows that the RPC has not established that the IPC failed to comply with the procedural provisions of the Suspension Policy.

c) *Proportionality*

73. The more difficult question for consideration is whether the decision to suspend the RPC without reservation, or alleviation of the consequences to Russian Paralympic athletes, was proportionate - an obligation recognised in the Decision itself.

74. As the RPC put it, the question is whether the Decision served a legitimate purpose and was suitable, necessary and appropriate for the objective which it aims to achieve.

ca) The challenge made

75. The RPC does not challenge the IPC’s right, as an international federation, to suspend a member federation or to place conditions on membership. The RPC’s case is, in essence, that the IPC decision to suspend it from membership, with the consequence that no Russian Paralympic athlete is eligible to compete in the Paralympic Games in Rio, was unwarranted and disproportionate for a number of reasons, individually and cumulatively, including that the RPC:

- was not directly or indirectly implicated in the IP Report
- did not control the laboratories or personnel specified in the IP Report
- did not know, and still does not know the detail of the evidence considered by Professor McLaren as set out in the IP Report
- was effectively denied the right to be heard

- was given inadequate opportunity by the IPC to respond to the case made against it, and contrary to the Suspension Policy and, taking account of the term allowed for was not reasonable or in good faith
  - has exhausted all measures required under Article 20.4 of WADA Code and Article 16 of IPC Anti-Doping Code (Ex A-21)
  - has ensured further that, since 2016, all doping control activities are performed by foreign organisations.
76. The RPC contends that the IPC could have adopted a “softer measure” that still permitted clean Russian athletes to compete in the Paralympic Games in Rio. It also submits that a blanket prohibition is not justified, as it has not been established that all para-athletes nominated by the RPC have ever been implicated in doping.
77. The RPC emphasises the lack of proportionality in the effect on innocent third parties who have already had to overcome significant obstacles in their lives. The RPC called three athletes to give evidence to the Panel. Each spoke of the effect of impairment, life before sport and the effect of sport on his or her life now. Each athlete also spoke of the goal of competing in the Paralympic Games in Rio. To summarise this evidence is not take away its impact. Each athlete has found in sport a way to deal with physical and medical conditions that, either from birth or later from accident, severely impacted the ability to engage in and enjoy life.
- cb) Consideration by the Panel
78. The Panel does not find that the Decision lacks proportionality. In coming to this conclusion the Panel specifically took into account as follows:
- (i) Interests of the Athletes not to be retained
79. Importantly, the Panel notes that these proceedings are based on a specific Arbitration Agreement. The parties to the arbitration are the RPC and the IPC exclusively. The Russian para-athletes are not parties to this appeal. Questions of athletes' rights that may not derive from the RPC, but of which they themselves are the original holder, such as rights of natural justice, or personality rights, or the right to have the same opportunities to compete as those afforded to Russian Olympic athletes by the IOC in its decision of 24 July 2016 regarding the Olympic Games Rio 2016, are not for this Panel to consider. The Panel makes no comment on whether such rights exist, or the nature and extent of any such rights. The matter for review by this Panel is thus not the legitimacy of a “collective sanction” of athletes, but whether or not the IPC was entitled to suspend one of its (direct) members. The fact that the suspension of the RPC reflexively affects the Russian para-athletes insofar as they derive a legal position from the RPC is a logical and natural consequence of the simple fact that the IPC Constitution allows for legal persons (representing the sport in a specific geographical area) to obtain membership. This by itself cannot change the accountability of such a (collective) member to comply with

the obligations imposed by the IPC Constitution. In particular, the collective member cannot hide behind those individuals that it represents.

80. The RPC submitted in the hearing that the RPC – through its statutes – is mandated to collectively assert such individual rights as are originally held by the athletes. The Panel does not accept this submission. It is the very essence of a personality right, as well as rights of natural justice, that they cannot, in principle, be dissociated from the original holders and transferred to others. Consequently, in the opinion of the Panel, the RPC cannot itself seek relief as the holder, preserver or protector of these individual rights of the athletes.

(ii) The magnitude of the failure

81. The IPC was faced with probative evidence of widespread systemic doping under the RPCs “watch”. It has described the findings of the IP Report as disclosing the “*the biggest doping scandal in sports history*”. Following the publication of the IP Report, WADA issued a statement which included a recommendation that the IOC and IPC consider, under their respective Charters, to decline entries, for Rio 2016, of all athletes submitted by the Russian Olympic Committee and the RPC. The IOC followed this recommendation, in principle, but delegated the decision to the international federations, together with guidelines to be applied. The IPC chose to act in a different way, insofar as it did not delegate the decision, whether or not to enter Russian para-athletes, to its members but decided to handle the matter uniformly for all of its members. The fact that the IPC chose to proceed in this way in light of the IP Report does not establish, *per se*, the disproportionality of the Decision.

(iii) The functioning of organised sport

82. The IPC points to its hierarchical and federal structure according to which its members govern and implement the respective sport exclusively in a specific geographic region. In order to promote and govern the sport on a world-wide level, the IPC is, thus, dependent on its (national) members to implement its policies on a national level. Consequently, the IPC relies on the RPC to ensure compliance in Russia with its zero tolerance anti-doping policy. The IPC points out that this is not particular to Paralympic sport. Rather, this federal system with complementary international and national obligations is the core back-bone of the fight against doping, as is evidenced by the respective articles in the WADA Code (cf. sec. on additional roles and responsibilities). The IPC says that the assertion by the RPC that it did not know what was happening and that it had no control over those involved in the system described by Professor McLaren does not relieve the RPC of its obligations but makes matters worse. The IPC does not, it says, have the resources to do its own testing and enforcement of the rules and says that it relies on the national federations to take the steps necessary to ensure the confidence of the athletes and the public in the integrity and credibility of competition.

(iv) The legal basis

83. The decision of the IPC to suspend the RPC was within its power, has a proper legislative basis and was not irrational, or perverse, or outside the margin of discretion open to it. The Decision was not evidently or grossly disproportionate. It was a unanimous decision of the IPC's Governing Board, which included six Paralympians and representatives from around the world. The IPC explained that it made the decision as it viewed suspension as the only way to ensure that the system, and systematised doping, in Russia no longer continued. Suspension cannot be said to be evidently or grossly disproportionate in view of the overwhelming evidence of the IP Report and the information that followed that directly affected Paralympians in Russia, including in the Sochi Paralympic Games.
84. The IPC contends, in effect, that it was a legitimate aim to send a message that made clear the lack of tolerance on the part of the IPC to such systemic failure in a country. At the time of making that decision, there was no sufficient evidence before the IPC that such failure had been remedied. The concern that clean athletes, inside and outside of Russia, have confidence in the ability to compete on a level playing field, and the integrity and credibility of the sporting contest, represent powerful countervailing factors to the collateral or reflexive effect on Russian athletes as a result of the suspension. This represents an overriding public interest that the IPC was entitled to take into account in coming to the Decision.
85. As was confirmed in CAS OG 16/09, an international federation may, in appropriate circumstances and in accordance with its Rules, suspend a member federation based on a breach of its Anti-Doping Policy and based on the "reliable information" of the IP Report. In the present case, there has been a breach of the IPC Anti-Doping Policy and the RPC duties and obligations in this respect. Furthermore, the IPC had before it reliable information from Professor McLaren in the IP Report as well as the subsequent information provided by him to the IPC as set out in the McLaren Affidavit.

(v) The damage caused

86. The testing of Russian Paralympic athletes had not complied with the WADA Code. The damage caused by the systemic, non-compliance is substantial. It is yet unknown how many athletes were precisely affected by the doping system described in the IP Report and the McLaren affidavit. However, based on the information before the Panel, the number of athletes that have benefitted from the methodologies described in the McLaren affidavit, in that they had been the subject of a SAVE order and their samples had been "cleaned", is considerable. This was not a case of a single or simple failure by an anti-doping authority. It was not a case of failing temporarily or occasionally to fulfil an obligation, or of inconsequential inadvertence on the part of the RPC. The RPC had a non-delegable responsibility with respect to implementing an anti-doping policy in conformity with the WADA Code in Russia. As an athlete cannot escape the consequences of an anti-doping rule violation by delegating his or her responsibility in relation to the personal duty to ensure that no prohibited substance enters his or her system (Art. 2.1.1 WADA Code), the RPC cannot delegate the consequences where other

bodies within Russia acting as its agent implement a systemic system of doping and cover-up. Delegation is permissible and practical and may, indeed, be necessary but, as is recognised in many legal situations, it is not a means of avoiding all responsibility.

(vi) No obvious alternatives

87. Could the IPC have fashioned another decision, within the available time before the Paralympic Games in Rio? As the RPC did not provide in its submissions for any kind of a specific alternative that would enable athletes to avoid the consequences of suspension of the RPC which render them ineligible to compete and to allow them to compete in the Paralympic Games in Rio, it is not for the Panel to do so.
88. The IPC took the view, which was not unreasonable in the circumstances of the scale and the nature of the doping and cover-up, that the purpose of a suspension of membership was threefold. On the one hand, the measure was designed to provoke behavioural change (for the future) within the sphere of responsibility of the RPC. On the other hand, the suspension took into account that the failures in the past had resulted in a distorted playing field on an international level, because the IPC anti-doping policy was not being adequately enacted and enforced vis-à-vis para-athletes affiliated to RPC. Finally, the IPC submitted that in view of the fact that Paralympic sports had been specifically mentioned in the IP Report, a strong message had to be issued to restore public confidence, since the Paralympic movement depends – much more than other sports – on the identification with moral values.
89. The Panel notes that all three goals pursued by the IPC are legitimate and that the measure taken is suited to achieve the goals pursued. The suspension of the RPC was a means of restoring a level playing field and was, in addition, a powerful tool to provoke behavioural change within the RPC's sphere of influence. The Russian stakeholders responsible for the systemic doping used the RPC to enter (doped) athletes into the competitions. By suspending the RPC this ability was and will be undermined. The measure taken was also a powerful message to restore public confidence. There was no submission to the Panel of an alternative measure that would, comparably and effectively, restore a level playing field for the present and the immediate future, affect future behavioural change and restore public trust.

(vii) No breach of statutory provision

90. In the hearing, the RPC submitted that the suspension amounts to the imposition of a sanction without fault, which would be contrary to basic notions of justice. The Panel notes that under German law, where a party has committed a breach of its obligation, the onus of proof that it did so without fault rests with it alone (cf. sec. 280 para 1 sentence 2 German Code of Civil procedure). The legal situation in Switzerland is identical (Art. 97 para. 1 Code of Obligations). Even if fault were required, the Panel finds, on the balance of probabilities, that the RPC has not discharged its onus or proof that it was not at fault. Furthermore, the Panel notes that under German law a sanction issued by an association against one of its members does not necessarily

require that the member violated its obligation with fault. Reference is made in this respect to a decision of the German Federal Court that reads as follows (BGH NJW 1059, 982, 983): “*Zur Verhängung einer Vereinsstrafe ist Verschulden nicht unbedingt Voraussetzung ... Es gibt zahllose Bestrafungen bei bloss objektiver Verletzung der Mitgliedspflichten ...*” [free translation: “The handing down of a sanction by an association does not necessarily require fault ... There are numerous sanctions possible in case of a mere objective violation of member obligations ...”]. The latter appears to be – at least according to the view of prominent scholars – also the legal situation under Swiss association law (cf. Berner Kommentar ZGB/RIEMER, 1990, Art. 70 no. 210).

(viii) Conclusion

91. The IPC took an action which it believed was necessary, as explained in its submissions, “*to enforce the core and crucial obligations of its members on which fair competition depends*”. In that regard, in light of the extent of the application of the system described by Professor McLaren and his findings of the system that prevailed in Russia, made beyond reasonable doubt, the Decision to suspend the national federation was not disproportionate. The RPC points to the consequences for the athletes but considering the matter in dispute in, and the parties to, this arbitration, such consequences follow from the suspension, as has happened in the case of other suspensions of NFs.

d) *Recent actions by the RPC*

da) The Submission by the Parties

92. The RPC points out that it has taken remedial steps. It has written to the Russian Ministry of Sport, but received no answer and was referred to RUSADA instead. It has written to RUSADA seeking information. It has sought information from WADA and from Professor McLaren as to individual athletes that have been alleged to have doped and has commenced investigations. It strongly relies on the fact that it has, since January 2016, placed its athletes under testing conducted outside of Russia, namely by UKAD. It submits that this is a highly relevant factor in assessing the proportionality of the decision to suspend, with the consequence that athletes that are the subject of unimpeachable testing are unable to compete in Rio.

93. The RPC submits that the Decision is presently disproportionate because since January 2016 its Paralympic athletes have been subject to testing by international bodies. However, the evidence is not clear that such procedures are already fully in place and that they have successfully cured the systematic violation of the anti-doping rules or its long term effects.

db) Consideration by the Panel

94. The Panel notes that a WADA Report on compliance in June 2016 specified non-compliance by athletes in submitting to testing, difficulties in receiving information from various Russian

entities, as well as delayed payments and incomplete access to venues and athletes. The Panel notes that there is no evidence in answer to this report or in answer to the McLaren affidavit.

95. The Panel noted the sincere and powerful statement by Mr Lukin, the President of the RPC that he, on behalf of the RPC, was committed to ensuring that the IPC Anti-Doping Policy was fully complied with in the future. However the evidence does not establish that the appropriate steps have yet occurred. What has occurred in Russia was not a minor breach of an obligation or a random failure. Instead, this situation of non-compliance has been ongoing for many years (cf. IP Report: 2011-2015). The RPC has not established that there was at the time of the Decision, or now, a systemic cure for the systemic failure that occurred within the RPC jurisdiction and “*on the RPC’S watch*” and that clearly demonstrated that there had, at the least, been a marked failure by the RPC to fulfil its obligations to ensure compliance with its Anti-Doping Policy.
  96. The recent actions by the RPC do not have sufficient weight to affect the proportionality of the Decision.
- e) *The relevance of the decision of the IOC as to the participation of Russian athletes following the IP Report*
97. The Appellant points to the way in which the IOC dealt with the participation of Russian athletes in the Games of the XXXI Olympiad in Rio de Janeiro following the publication of the IP Report. In particular, it points to the IOC recognition that the IP Report made no findings against the Russian Olympic Committee as an institution. It points out that no findings were made against the RPC and that the IP Report does not mention the involvement of the Appellant in the alleged doping scheme.
  98. The Panel is of the view that the decision of the IOC following the IP Report is not determinative of the issues in the present case. The IOC and IPC operate under different charters and constitutions and are entitled to come to different conclusions as to how best to respond to factual circumstances. The decision of one does not bind the other. For example, when the IOC referred the consideration to the individual International Federations, there were different responses, none of which has been demonstrated to have been inappropriate. Furthermore, and as opposed to the IOC, the IPC itself is actually the International Federation for 10 Paralympic Sports (alpine skiing, athletics, biathlon, cross country skiing, ice sledge hockey, powerlifting, shooting, snowboard, swimming and wheelchair dance sport), and in such capacity it is responsible for the governance of the sport, and for coordinating and supervising World Championships and other competitions. Therefore, at least in these ten Paralympic sports, the IPC decision stands on the same level as the various decisions of the IFs.
  99. Finally, the Panel notes that – on a substantive construction – the IOC decision and the IPC Decision are not in contradiction. In the IOC Decision dated 24 July 2016, the latter provided the following guidelines to the international federations to handle the so-called Russian doping scandal:

*“1. The IOC will not accept any entry of any Russian athlete in the Olympic Games Rio 2016 unless such athlete can meet the conditions set out below.*

*2. Entry will be accepted by the IOC only if an athlete is able to provide evidence to the full satisfaction of his or her International Federation (IF) in relation to the following criteria:*

- *The IFs, when establishing their pool of eligible Russian athletes, to apply the World Anti-Doping Code and other principles agreed by the Olympic Summit (21 June 2016).*
- *The absence of a positive national anti-doping test cannot be considered sufficient by the IFs.*
- *The IFs should carry out an individual analysis of each athlete’s anti-doping record, taking into account only reliable adequate international tests, and the specificities of the athlete’s sport and its rules, in order to ensure a level playing field.*
- *The IFs to examine the information contained in the IP Report, and for such purpose seek from WADA the names of athletes and National Federations (NFs) implicated. Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games.*
- *The IFs will also have to apply their respective rules in relation to sanctioning of entire NFs.*

*3. The ROC is not allowed to enter any athlete for the Olympic Games Rio 2016 who has ever been sanctioned for doping, even if he or she has served the sanction.*

*4. The IOC will accept any entry by the ROC only if the athlete’s IF is satisfied that the evidence provided meets conditions 2 and 3 above and if it is upheld by an expert from the CAS list of arbitrators appointed by an ICAS Member, independent from any sports organisation involved in the Olympic Games Rio 2016.*

*5. The entry of any Russian athlete ultimately accepted by the IOC will be subject to a rigorous additional out-of-competition testing programme in coordination with the relevant IF and WADA. Any non-availability for this programme will lead to the immediate withdrawal of the accreditation by the IOC” (emphasis added).*

100. It follows from the explicit wording of the above guidelines that the IOC was not opposed to (but rather mandated) the exclusion of a member federation on the condition that there was a proper provision within the statutes and regulations of the international federation to provide for such an exclusion.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by the Russian Paralympic Committee on 15 August 2016 against the decision rendered by Governing Board of the International Paralympic Committee on 7 August 2016 is dismissed.
2. The decision rendered by the Governing Board of the International Paralympic Committee on 7 August 2016 is confirmed.
3. (...).
4. (...).
5. All further claims and prayers for relief are dismissed.