



**Arbitration CAS 2017/O/5331 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) and Ekaterina Volkova, award of 3 May 2018**

Panel: Prof. Jens Ewald (Denmark), Sole Arbitrator

*Athletics (middle & long distance)*

*Doping (dehydrochloromethyltestosterone)*

*CAS jurisdiction under Article 38.3 of the IAAF Competition Rules*

*Determination of the substantive and procedural laws applicable to an anti-doping rule violation-related dispute*

*Recognition by the IAAF and its members of a final and binding IOC's adjudication*

*Assessment of the duration of a period of disqualification of results following a sample re-testing*

1. In view of the suspension-based inability of the RUSAF to conduct the hearing process described in Rule 38.3 of the IAAF Competition Rules (IAAF CR, edition 2016-2017), the relevant athlete's status of International-Level Athlete and her tacit acceptance of the procedure described therein, the IAAF is entitled on the basis of the aforementioned Rule to refer the athlete's case to CAS so that it is heard in the first instance by a sole arbitrator.
2. Pursuant to art. 21.3 of the IAAF Anti-Doping Rules (IAAF ADR), which entered into force on 3 April 2017 (art. 1.13 of the IAAF ADR), an anti-doping rule violation (ADRV) committed prior to said date is in principle subject, for substantive matters, to the rules in place at the time of the alleged anti-doping rule violation and, for procedural matters, to the version of the rules in place immediately prior to 3 April 2017. Additional provisions or principle set forth in said article (may) apply depending on the particularities of a case.
3. Pursuant to Rule 46.2 of the 2016-2017 IAAF CR, IOC's adjudications resulting in the finding of an ADRV having occurred at the Olympic Games shall *inter alia* be recognised by the IAAF and the IAAF members once said adjudication has become final under the applicable law.
4. According to the wording of Rule 39.4 of the 2008 IAAF CR, the disqualification of specific results obtained by an athlete having been found guilty of an ADRV is the main rule, whereas applying the notion of "*fairness*" to the duration of such period of disqualification would be an exception. The factors to be assessed in the "*fairness*" test include, but are not restricted to, the athlete's intent and degree of fault as well as the length of the disqualification period.

## **I. PARTIES**

1. The International Association of Athletics Federations (“IAAF” or the “Claimant”) is the world governing body for track and field, recognized as such by the International Olympic Committee. It has its seat and headquarters in Monaco.
2. The Russian Athletics Federation (RUSAF) (the “Russian Federation” or the “First Respondent”) is a member, currently suspended, of the IAAF as the national athletics federation for Russia.
3. Mrs Ekaterina Volkova (the “Athlete” or “Second Respondent”, together with the First Respondent, the “Respondents”) is a Russian middle- and long-distance runner. The Athlete is an International-Level Athlete for the purposes of the IAAF Anti-Doping Rules.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the parties’ submissions on the merits of this appeal. Additional facts and allegations found in the parties’ written submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 17 August 2008, the Athlete underwent a doping test at the Games of the XXIX Olympiad in Beijing in 2008 (the “Games”).
6. The sample was analysed and did not reveal the presence of any prohibited substance.
7. The IOC requested the Lausanne laboratory to perform further analyses on the Athlete’s sample. The analyses revealed the presence of Dehydrochloromethyltestosterone (“DHCMT”, also known as “oral turinabol”) metabolites. This substance was found in both the A Sample as well as the B1-Sample (further to a splitting of the B-Sample). The Athlete was informed by the IOC of her right to have the B2-Sample analysed, which she did not exercise in the set deadline.
8. DHCMT is an Exogenous Androgenic Anabolic Steroids, prohibited under section S1.1.a of the relevant Prohibited List.
9. In view of the above Adverse Analytical Finding, the IOC Disciplinary Commission found, on 19 October 2016, that the Athlete had committed an anti-doping rule violation and disqualified her results obtained at the 3000m steeplechase event of the Games (the “IOC Decision”).
10. The case of the Athlete was then referred to the IAAF for the imposition of consequences over and above those related to the Games.

11. On 14 November 2016, the IAAF notified the Athlete that her case had been referred to it, that it recognized the IOC Decision in application of Rule 46 of the 2016-2017 IAAF Competition Rules (the “2016-2017 IAAF Rules”) and therefore that the Athlete was deemed to have committed an anti-doping rule violation. The Athlete was informed that her case would be referred to CAS and was granted a deadline until 22 November 2016 to choose whether to proceed under Rule 38.3 or 38.19 of the 2016-2017 IAAF Rules. She also had the possibility to provide an explanation for the positive finding within the same deadline, failing which (or should the explanation be inadequate) she would be provisionally suspended.
12. On 24 November 2016, the IAAF granted a final opportunity for the Athlete to choose between proceedings under Rule 38.3 and 38.19 of the 2016-2017 IAAF Rules, failing which the CAS hearing would be conducted under Rule 38.3 of the 2016-2017 IAAF Rules. The Athlete never responded to that mail.
13. On 15 December 2016, the Athlete was provisionally suspended, as no explanation was provided to the IAAF in the given deadline. The Athlete was also informed that her case would be referred to CAS under Rule 38.3 of the 2016-2017 IAAF Rules.
14. On 28 March 2017, the IAAF gave the Athlete a last opportunity to admit the violation and receive a two year ineligibility period and disqualification of results from 17 August 2008 until 16 August 2010 by returning an Acceptance of sanction form signed by 10 April 2017. The Athlete never responded to this letter either.

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

15. On 22 September 2017, IAAF filed a Request for Arbitration with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2017 edition) (the “CAS Code”). The IAAF informed the CAS that its Request for Arbitration was to be regarded as the IAAF’s Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the CAS Code, the procedure being governed by the CAS appeals arbitration rules, pursuant to Rule 38.3 of the 2016-2017 IAAF Rules. Furthermore, the IAAF requested the matter to be submitted to a sole arbitrator, acting as a first instance body. The Request for Arbitration contained a statement of facts and legal arguments and included requests for relief.
16. On 29 September 2017, the CAS Court Office initiated the present arbitration and specified that the case had been assigned to the CAS Ordinary Division but it would be dealt with in accordance with the Appeals Arbitration Division rules. The Respondents were further invited to submit their Answers. Additionally, the First Respondent was invited to forward the letter and its exhibits to the Second Respondent. Finally, the Parties were invited to communicate the personal postal address of the Second Respondent at their earliest convenience. The cover letter accompanying the Request for Arbitration was also sent by e-mail to the e-mail address (...) provided by the IAAF for the Second Respondent.
17. On 10 November 2017, the CAS Court Office advised the Parties that it had not received any Answer from the Respondents. Therefore, the CAS Court Office invited the First Respondent

to inform the CAS Court Office by 16 November 2017 of the date on which the CAS letter of 29 September 2017 had been delivered to the Second Respondent and to produce any relating evidence of this date. Furthermore, the Claimant and the Respondents were again invited to communicate the personal postal address of the Second Respondent within the same time limit.

18. On 16 November 2017, the Claimant provided the CAS with the Second Respondent's personal postal address.
19. By letter of 17 November 2017 delivered by e-mail and by DHL to the Second Respondent's personal address, the CAS Court Office informed the Parties that unless an objection will be submitted by one of the Parties within three (3) days, it will be considered that the Parties agree that any future communications by the CAS Court Office to the Second Respondent will be sent by e-mail to the Second Respondent's e-mail address or her personal address.
20. On 8 December 2017, in accordance with Article R54 of the CAS Code and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the Parties that Prof. Jens Evald had been appointed as the Sole Arbitrator. The Parties did not raise any objection to the constitution and the composition of the Panel.
21. In the same letter, the CAS Court Office referred to its letter of 17 November 2018 and confirmed that, in the absence of any objection, the CAS communications for the Second Respondent would be sent by e-mail to the Second Respondent's e-mail address or her personal address.
22. By letter of 22 December 2017, the CAS Court Office informed the Parties that the First Respondent had failed to indicate when it provided the Second Respondent with the CAS Court Office letter of 29 September 2017 together with the enclosures that all the Parties tacitly agree that the notification for the Second Respondent shall be made by e-mail to the Second Respondent's e-mail address or her personal address. Therefore, the CAS Court Office invited the Second Respondent to submit, within 30 days, a statement of defence. As for the enclosures of the Request for Arbitration, the CAS Court Office noted that they were sent exclusively by e-mail and, unless an objection that would be sent by the Second Respondent within 3 days, they shall be considered to have been duly received by the Second Respondent. Furthermore, the CAS Court Office noted that unless it was informed otherwise by the Second Respondent it will be considered that she has chosen not to file any written submissions in this matter and the Sole arbitrator would nevertheless proceed with the arbitration. Finally, the CAS Court Office invited the Parties to inform by 9 January 2018 whether they prefer a hearing to be held or for the Sole Arbitrator to issue an award based solely on the written submissions.
23. In its e-mail of 9 January 2018, the Claimant stated that the matter could be decided on the basis of the written record, but reserved its final position until it had reviewed the Answer (if any).
24. On 28 February 2018, the CAS Court Office informed the Parties that its letter of 22 December 2017 had been delivered to the Second Respondent on 25 January 2018 and neither of the

Respondents replied to this letter. Further, the Parties were advised that the Sole Arbitrator had decided, in accordance with Articles R55 and R57 of the CAS Code to proceed with the arbitration and deliver an award, solely based on the Parties' written submissions, without the need to hold a hearing. Indeed, none of the Parties requested the holding of a hearing and the Sole Arbitrator deemed himself sufficiently well-informed to do so. The Parties were further invited to return an enclosed Order of Procedure within 5 days and were informed that, unless the CAS Court Office would hear otherwise from one the parties within the same time-limit, it would be considered that all parties agree with the issuance of an award based on the CAS file in its current state.

25. The Claimant's counsel signed and returned the Order of Procedure to the CAS Court Office on 28 February 2018. Both Respondents failed to return a duly signed copy of the Order of Procedure.

#### **IV. PARTIES SUBMISSIONS**

26. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

27. The IAAF submissions, in essence, may be summarized as follows:

- In the IOC Decision, the IOC Disciplinary Commission determined that the Athlete had committed an anti-doping rule violation (Presence of a Prohibited Substance) under the IOC Anti-Doping Rules and the IAAF is bound by this decision as per Rule 46 of the 2016-2017 IAAF Rules.
- In any event, Rule 32.22(a) of the 2008 IAAF Rules also forbids the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.
- The presence of DHCMT has been found in the Athlete's A- and B1-Samples collected at the Games. DHCMT is prohibited in- and out-of-competition under section S1.1.a of the 2008 Prohibited List. DHCMT is a non-specified substance.
- The Athlete has waived her right to the analysis of the B2-Sample and the B2-Sample was not analysed. Therefore, the fact of the anti-doping rule violation in connection with the Games is unquestionable.
- As DHCMT is not a specified substance, the IAAF requests that the Athlete be sanctioned with a two-year ineligibility period.

- As the positive test was conducted on 17 August 2008, the principle is that all results obtained by the Athlete from such date until her provisional suspension on 15 December 2016 shall be disqualified.
  - However, the IAAF is willing to accept, as a matter of fairness, that the period of disqualification be limited to two years from sample collection, *i.e.* until 16 August 2010, in view of the fact that the Athlete would have been declared ineligible for such period had the positive finding arisen at the Games.
28. In light of the above, the IAAF submits the following prayers for relief in the Request for Arbitration:

*“(i) CAS has jurisdiction to decide on the subject matter of this dispute;*

*(ii) The Request for Arbitration of the IAAF is admissible.*

*(iii) A period of ineligibility of two years is imposed upon the Athlete, commencing on the date of the CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the CAS Award shall be credited against the total period of ineligibility to be served.*

*(iv) All competitive results obtained by the Athlete from 17 August 2008 until 16 August 2010 (to the extent not already disqualified by the IOC Decision) are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*

*(v) The arbitration costs are borne by RUSAF or, in the alternative, jointly and severally by the Respondents.*

*(vi) The IAAF is awarded a contribution to its legal costs”.*

29. Although duly invited, neither of the Respondents filed an Answer to the IAAF’s Request for Arbitration, to be regarded as its combined Statement of Appeal and Appeal Brief, within the prescribed time limit or thereafter. Pursuant to Article R55 of the CAS Code, the Sole Arbitrator can proceed to make an award in relation to IAAF’s claims. Despite the lack of formal Answer from the Respondents, the legal analysis below will take into account all available relevant information, and it is not restricted to the submissions of the IAAF.

## **V. JURISDICTION**

30. The jurisdiction of the CAS in this appeal derives from Rule 38.3 of the 2016-2017 IAAF Rules, effective from 1 November 2015.

31. Rule 38.3 of the 2016-2017 IAAF Rules provides as follows:

*“If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete’s request to the Member. (...) If the Member fails to*

*complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure by a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45”.*

32. The suspension of the RUSAF’s membership of the IAAF was confirmed on the occasion of the IAAF Council meeting in Monaco on 26 November 2015. On 17 June 2016, 1 December 2016, on 31 July 2017, and, more recently, on 6 March 2018, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership. The suspension of RUSAF therefore remains in place. As a consequence of its suspension, RUSAF was not in a position to conduct the hearing process of the Athlete’s case by way of delegated authority from the IAAF pursuant to Rule 38 of the 2016-2017 IAAF Rules.
33. Consequently, RUSAF is not in a position to convene a hearing within the two-month time period set out in Rule 38.3 of the 2016-2017 IAAF Rules. In these circumstances, it is not necessary for the IAAF to impose any deadline on RUSAF for that purpose.
34. In view of the inability of RUSAF to conduct a hearing process within the requisite timeframe, the Athlete’s status as an International-Level Athlete and her tacit acceptance of such procedure, the IAAF is entitled pursuant to Rule 38.3 of the 2016-2017 IAAF Rules to refer the case of the Athlete to CAS to be heard in the first instance by a Sole Arbitrator. This has also been confirmed in different CAS awards, including CAS 2017/A/4949, CAS 2016/O/4463 at para. 48 *et seq.* and CAS 2016/O/4464 at para. 62 *et seq.*
35. It follows that the CAS has jurisdiction to adjudicate and decide the present matter and the present case shall be dealt with in accordance with the Appeals Arbitration rules.

## **VI. ADMISSIBILITY**

36. The Claimant’s Request for Arbitration to be regarded as its combined Statement of Appeal and Appeal Brief complies with all the procedural and substantive requirements of the CAS Code. Neither the Respondents disputes the admissibility of the IAAF’s claims. Accordingly, the Sole Arbitrator deems the claims admissible.

## **VII. APPLICABLE LAW**

37. The IAAF submits that the IAAF rules and regulations are the applicable rules in this case. In the IAAF’s view, the procedural aspects of these proceedings shall be subject to the 2016-2017 edition of the IAAF Rules. The IAAF further submits that for the substantive matters, the

Athlete's anti-doping rule violation is subject to the rules in place at the time for the alleged anti-doping rule violations, *i.e.*, the 2008 IAAF Rules. To the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law shall be applied (on a subsidiary basis) to such issue.

38. RUSAF or the Athlete did not put forward any specific position in respect of the applicable law.

39. Article R58 of the CAS Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in 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”.*

40. The provision is in line with Article 187, paragraph 1 of the Swiss Private International Law Act (PILA), which in its English translation states as follows: *“The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in absence of such choice, according to the law with which the action is most closely connected”.*

41. Article 13.9.4 of the IAAF Anti-Doping Rules entered into force on 3 April 2017 (the “IAAF ADR”) states as follows:

*“In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Rules and Regulations)”.*

42. Article 13.9.5 of the IAAF ADR further provides as follows:

*“In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise”.*

43. Art. 1.7 of the IAAF ADR states that *“These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons (...) (b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held”.*

44. The Athlete is an International-Level Athlete for the purposes of the IAAF ADR and the re-testing violation arose from samples collected at the Games; the Athlete is thus bound by the IAAF ADR.

45. Based on the above, and considering that the applicable law is not in dispute, the applicable laws in this arbitration are the IAAF rules and regulations and, subsidiarily Monegasque law.

46. Pursuant to article 21.3 of the IAAF ADR, the Sole Arbitrator is satisfied that anti-doping rule violation committed prior to 3 April 2017 (the effective date as defined by Art. 1.13 of the IAAF ADR) are subject, for substantive matters, to the rules in place at the time of the alleged anti-doping rule violation and, for procedural matters, to the version of the rules in place immediately prior to the Effective Date (*i.e.* 3 April 2017).
47. As the Olympic Games Violation occurred in 2008, the 2008 IAAF Competition Rules (the “2008 IAAF Rules”) shall, in principle, apply to the substantive matters.
48. The version of the rules in place immediately prior to the Effective Date is the 2016-2017 IAAF Competition Rules, effective from 1 November 2015 (the “2016-2017 IAAF Rules”). The 2016-2017 IAAF Rules are therefore applicable for procedural matters in respect of the anti-doping rule violation.

### VIII. MERITS

49. The main issues to be resolved by the Sole Arbitrator are:
  - A. Did the Athlete commit an anti-doping rule violation?
  - B. In case the first question is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

#### A. Did the Athlete commit an ADRV?

50. The Sole Arbitrator observes that the following general regulatory framework is relevant as to the merits.
51. The relevant parts of Rule 46.2 of the 2016-2017 IAAF Rules read as follows:

*“In the case of an adjudication of the IOC arising from an anti-doping rule violation occurring at the Olympic Games, the IAAF and its Members shall recognize the finding of an anti-doping rule violation once it becomes final under applicable rules and shall thereafter submit the determination of the Athlete or other Person’s sanction beyond disqualification from the Olympic Games to the results management process provided in Rule 37 and 38”.*

52. Rule 32.2(a) of the 2008 IAAF Rules essentially reads as follows:

*“Doping is defined as the occurrence of one or more of the following Anti-Doping Rule violations:*

- (a) The presence of a prohibited substance or its metabolites or markers in an athlete’s body tissues or fluids.*

*All references to a prohibited substance in these Anti-Doping Rules and the Procedural Guidelines shall include a reference, where applicable, to its metabolites or markers.*

- (i) *It is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they are responsible for any prohibited substance found to be present in their bodies. It is not necessary that intent, fault, negligence or knowing use on an athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Rule 32.2(a)*".

53. Rules 33.1, 33.2 and 33.4 of the 2008 IAAF Rules. So far as material, stipulate the following:

"1. *The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an Anti-Doping Rule violation has occurred under these Anti-Doping Rules.*

2. *The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing body, bearing in mind the seriousness of the allegation which is made. This standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*

(...)

4. *Facts related to Anti-Doping Rule violations may be established by any reliable means. The following standards of proof shall be applicable in doping cases:*

(a) *WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The athlete may rebut this presumption by establishing that a departure from the International Standard for Laboratories has occurred, in which case the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not undermine the validity of the adverse analytical finding*".

54. The Sole Arbitrator observes that, in its attempt to establish the Athlete's ADRV, the IAAF primarily relies on the IOC Decision confirming an ADRV by the Athlete.

55. The Sole Arbitrator notes that pursuant to Rule 46.2 of the 2016-2017 IAAF Rules, in case of an adjudication of the IOC arising from an ADRV occurring at the Olympic Games, the IAAF shall recognize the finding of an ADRV once it becomes final under applicable law. As shown by the IOC Decision, the IOC has adjudicated the Athlete's ADRV, which occurred at the Games. The Respondents have neither alleged that the IOC Decision was not final, nor have they submitted any arguments why the IOC Disciplinary Commission's finding on the Athlete's ADRV should not be recognized. Therefore, the Sole Arbitrator is comfortably satisfied that the Athlete has committed an ADRV and that there are grounds to impose a sanction on her under Rule 46.2 of the 2016-2017 IAAF Rules.

56. Secondarily, and *ex abundanti cautela*, the IAAF relies on the Adverse Analytical Finding, in the Athlete's A- and B1-Samples collected at the Games as well as the fact that the Athlete waived her right to the analysis of the B2-Sample and that the B2-Sample was not analysed.

57. The Sole Arbitrator notes that Rule 32.2(a) of the 2008 IAAF Rules forbids the presence of a prohibited substance or its metabolites or markers in an athlete's body tissue or fluids. The IAAF has presented two Doping Control reports issued by the WADA-accredited Laboratory dated 4 May 2016 and 28 June 2016. According to the said reports, the Laboratory detected the presence of DHCMT metabolites in the Athlete's A-Sample. Considering that the Athlete has not disputed the Laboratory's finding, the Sole Arbitrator is comfortably satisfied that the Athlete has violated Rule 32.2(a) of the 2008 IAAF Rules and thus committed an ADRV. This finding is consistent with the IOC Disciplinary Commission's finding.

## **B. Sanction**

### **1. *Period of ineligibility start date***

58. Rule 40.1 of the 2008 IAAF Rules reads, in the relevant parts, as follows:

*"If any person commits an Anti-Doping Rule violation under these Anti-Doping Rules, he shall be subject to the following sanctions:*

*(a) For a violation under Rules 32.2(a), (b) or (f) (prohibited substances and prohibited methods), except where the prohibited substance is a specified substance in a case under Rule 40.5, or Rule 32.2(i) (competing whilst suspended or ineligible):*

*(i) First violation: for a minimum period of two years' ineligibility".*

59. As stipulated in Rule 40.1(a)(i) of the 2008 IAAF Rules, the basic duration of the ineligibility period for a violation under Rule 32.2(a) of the 2008 IAAF Rules is two years, except where the prohibited substance is a specified substance in a case under Rule 40.5.

60. DHCMT is not a specified substance. Furthermore, RUSAF or the Athlete have not filed any submissions with the CAS with regard to the length of the ban or any other consequence for the anti-doping rule violation governed by the 2008 IAAF Rules. In particular, the Athlete has not submitted to the CAS that the period of ineligibility should be mitigated for some reason. According to the IOC Decision, the Athlete has not provided any explanation for the presence of DHCMT in her sample in front of the IOC Disciplinary Commission either. Therefore, the Athlete shall be sanctioned with a two-year period of ineligibility under the 2008 IAAF Rules.

61. With respect to the sanction start date, the IAAF has requested that the ineligibility period commence on the date of the CAS award and that the period of provisional suspension imposed on the Athlete until the date of the CAS award be credited against the total period of ineligibility to be served. The Respondents have not addressed the matter during the CAS proceedings.

62. The Sole Arbitrator is guided by Rule 40.9 of the 2008 IAAF Rules, which provides the following:

*“In any case where a period of ineligibility is to be imposed under this Rule, the period of ineligibility shall start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date the ineligibility is accepted or otherwise imposed. When an athlete has served a period of provisional suspension prior to being declared ineligible (whether imposed or voluntarily accepted), such a period shall be credited against the total period of ineligibility to be served”.*

63. The Sole Arbitrator finds that for practical reasons and in order to avoid any eventual misunderstanding the period of ineligibility shall start on 15 December 2016, the date of commencement of the provisional suspension, and not on the date of the award.

## **2. Disqualification**

64. The IAAF has noted that, in principle, all competitive results by the Athlete from and including 17 August 2008 until 15 December 2016 be disqualified. However, the IAAF is willing to accept, as a matter of fairness that the period of disqualification be limited to two years from sample collection, *i.e.* until 16 August 2010, in view of the fact that the Athlete would have been declared ineligible for such period had the positive finding arisen at the Games. The Respondents have not addressed the issue in the CAS proceedings.

65. Rule 39.4 of the 2008 IAAF Rules reads as follows:

*“In addition to the above, where an athlete has been declared ineligible under Rule 40 below, all competitive results obtained from the date the positive sample was provided (whether in-competition or out-of-competition) or other anti-doping rule violation occurred through to the commencement of the period of provisional suspension or ineligibility shall, unless fairness requires otherwise, be annulled, with all resulting consequences for the athlete (and, where applicable, any team in which the athlete has competed), including the forfeiture of all titles, awards, medals, points and prize and appearance money”.*

66. Pursuant to Rule 39.4 of the 2008 IAAF Rules, the disqualification of results is the main rule and applying fairness would be an exception. Thus, in principle, all results of the Athlete from a period of almost eight years should be disqualified despite the fact that the IAAF has not provided any evidence of an anti-doping rule violation by the Athlete after the positive sample was collected from the Athlete in the Games. However, results may remain valid if fairness so requires in the circumstances of each case (*e.g.* TAS 2009/A/2014). The factors to be assessed in the fairness test include, but are not restricted to, the athlete’s intent and degree of fault as well as the length of the disqualification period.
67. The Sole Arbitrator observes that the IAAF is willing to accept, as a matter of fairness, that the period of disqualification be limited to two years (instead of 8) from sample collection. The IAAF has justified its request by noting that the Athlete would have been declared ineligible for a two-year period had the positive finding arisen at the Games.
68. The Sole Arbitrator agrees with the IAAF that the general principle of fairness must prevail. Thus, the following issue to be determined by the Sole Arbitrator is the length of the disqualification period.

69. The Sole Arbitrator has previously concluded that the Athlete committed an anti-doping rule violation by using an anabolic steroid that was not discoverable at the time the Athlete administered it. As noted by the IOC Disciplinary Commission, the nature of the substance which was found in the Athlete's sample is consistent with intentional use of a prohibited substance specifically ingested to deliberately improve performance. In the circumstances of the case, it is not appropriate to maintain all results between the anti-doping rule violation and the commencement of the provisional suspension on the basis of fairness; the Athlete has endeavored to enhance her sporting performance with a prohibited substance and thereby to gain unjustified advantage over her rivals.
70. The Sole Arbitrator notes that it is the IAAF's policy in re-testing cases to connect the disqualification period to the length of the ban (CAS 2016/O/4463 para. 138). Any other shortened period of disqualification would also be arbitrary in the circumstances of the case. The Sole Arbitrator observes that the Respondents have chosen not to submit any claims or arguments with respect to the disqualification of results.
71. Based on the above considerations, the Sole Arbitrator finds it justified to disqualify all the Athlete's results obtained within two years from the collection of the sample in question.

## **ON THESE GROUNDS**

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

1. The Request for Arbitration filed by the International Association of Athletics Federations (IAAF) on 22 September 2017 against the Russian Athletics Federation and Mrs Ekaterina Volkova is upheld.
  2. A period of ineligibility of two (2) years is imposed on Mrs Ekaterina Volkova starting from 15 December 2016.
  3. All results achieved by Mrs Ekaterina Volkova on 17 August 2008 through to 16 August 2010 are disqualified (including forfeiture of any titles, awards, medals, points and prize and appearance money obtained during this period).
- (...)
7. All other and further prayers or request for relief are dismissed.