



**Arbitration CAS 2018/O/5666 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) & Tatyana Firova, award of 1 February 2019**

Panel: Mr Markus Manninen (Finland), Sole Arbitrator

*Athletics (middle-distance)*

*Doping (dehydrochlormethyltestosterone; 1-testosterone; use or attempted use of prohibited substances)*

*Burden and standard of proof*

*Validity of the testing methods for long-term metabolites of DHCMT*

*Means of proof and assessment of the reliability of the evidence*

*Validity of a contestation of facts*

*Sanction in case multiple violations can be considered as one single violation and aggravating circumstances*

*Substantial delay in the hearing process or other aspects of doping control*

*Fairness with regard to the disqualification of results*

- 1. While the burden of proof is – according to Swiss law – a question of substantive law, the standard of proof is a question of procedural law.**
- 2. The testing methods for long-term metabolites of dehydrochlormethyltestosterone (DHCMT) adopted by the laboratories, which led to the positive findings for DHCMT in Beijing Olympic Games and London Olympic Games, are scientifically valid.**
- 3. As stipulated in the IAAF Rules, an anti-doping rule violation (ADRV) against an athlete may be established by any reliable means. The assessment relating to the reliability of the evidence before a hearing panel must be made in light of all the facts and circumstances of an individual case.**
- 4. 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. General and completely unsubstantiated criticism is not sufficient.**
- 5. In a case where all ADRVs have to be considered, together, as one single first violation, Rule 40.7(d)(i) of the 2012-2013 IAAF Competition Rules provides that the sanction imposed shall be based on the violation that carries the more severe sanction. However, in accordance with Rule 40.6, ADRVs committed as part of a scheme, the use of multiple prohibited substances and such use on multiple occasions constitute aggravating circumstances that justify the imposition of a period of ineligibility greater than the standard sanction, up to a maximum of four years.**
- 6. If an athlete intentionally administers substances that make analysing the sample time-consuming, the delay is attributable to the athlete.**

7. **Rule 40.8 of the 2012-2013 IAAF Competition Rules does not explicitly contain a fairness exception. However, CAS panels have previously deemed that Rule 40.8 of the 2012-2013 IAAF Rules, or its equivalents, include a fairness exception or at least that it cannot be excluded that a general principle of “fairness” may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect. Fairness exception is an embodiment of the principle of proportionality. The sanction to be imposed for an ADRV must be proportional considering the length of the ineligibility period and the disqualification of results, together and alone. Indeed, although the main purpose of the disqualification of results is not to punish the transgressor, but rather to correct any unfair advantage and to remove any tainted performances from the record, having regard to the fact that the disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction. CAS panels have broad discretion in adjusting the disqualification period to the circumstances of the case.**

## **I. THE PARTIES**

1. The International Association of Athletics Federations (the “*Claimant*” or the “*IAAF*”) is the international governing body for the sport of athletics recognised as such by the International Olympic Committee (the “*IOC*”). It has its seat and headquarters in Monaco.
2. The Russian Athletic Federation (the “*First Respondent*” or “*RUSAF*”) is the national governing body for the sport of athletics in Russia. RUSAF has its registered seat in Moscow and is the relevant member federation, currently suspended from membership, of the IAAF for Russia.
3. Ms Tatyana Firova (the “*Athlete*” or the “*Second Respondent*”, together with the First Respondent, the “*Respondents*”, the Respondents together with the Claimant, the “*Parties*”), born in 1982, is a middle-distance runner from Russia. 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’ written submissions, pleadings, and evidence adduced. 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 Sole Arbitrator has 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.

**a. The Retesting Violation**

5. On 20 August 2008, the Athlete underwent a doping test at the Games of the XXIX Olympiad in Beijing, the People's Republic of China (the "*Beijing Olympic Games*"). The sample was analysed during the Beijing Olympic Games by the WADA-accredited laboratory in Beijing, but it did not result in an adverse analytical finding (the "*AAF*") at the time. After the conclusion of the Beijing Olympic Games, all the samples collected in the Beijing Olympic Games were transferred to the WADA-accredited laboratory "Laboratoire Suisse d'Analyse du Dopage" in Lausanne, Switzerland (the "*Laboratory*") for long-term storage.
6. Subsequently, the IOC requested the Laboratory to perform further analyses on the Athlete's sample. The analyses revealed the presence of dehydrochloromethyltestosterone ("*DHCMT*") metabolite and 3 $\alpha$ -hydroxy-5 $\alpha$ -androst-1-en-17-one (metabolite of 1-testosterone, 1-androstenedione, or 1-androstenediol). These substances were found in the A sample as well as the B1 and B2 samples (further to a splitting of the B sample). DHCMT, 1-testosterone, 1-androstenedione, and 1-androstenediol are Exogenous Anabolic Androgenic Steroids prohibited under section S1.1.a. of the 2008 Prohibited List.
7. On 3 June 2016, the IAAF received an Adverse Analytical Finding report forwarded by the IOC following the reanalysis of the Athlete's sample collected on 20 August 2008 at the Beijing Olympic Games.
8. On 6 June 2016, the IAAF sent a letter to the Athlete and granted her an opportunity to provide an explanation for the Adverse Analytical Finding. The IAAF noted that should the explanation be inadequate, the Athlete would be provisionally suspended.
9. On 9 June 2016, the Athlete accepted a voluntary provisional suspension.
10. On 29 August 2016, the IOC Disciplinary Commission rendered a decision (the "*IOC Decision*") in which it found that the Athlete had committed an anti-doping rule violation ("*ADRV*") and disqualified her results achieved during the Beijing Olympic Games (the "*Retesting Violation*"). The case of the Athlete was then referred to the IAAF for the imposition of consequences over and above those related to the Beijing Olympic Games.
11. On 8 November 2016, the IAAF informed the Athlete that her case had been referred to it, that it recognised the IOC Decision in application of Rule 46 of the 2016-2017 IAAF Competition Rules (the "*2016-2017 IAAF Rules*"), and that the Athlete was therefore deemed to have committed an ADRV. The Athlete was informed that her case would be referred to the Court of Arbitration for Sport (the "*CAS*") and was granted a deadline until 16 November 2016 to choose whether to proceed under Rule 38.3 or 38.19 of the 2016-2017 IAAF Rules.
12. On 14 November 2016, the Athlete indicated that she elected to proceed under Rule 38.3 of the 2016-2017 IAAF Rules.

13. On 28 March 2017, the IAAF granted the Athlete one last opportunity to admit the ADRV and receive a two-year ineligibility period and disqualification of results from 20 August 2008 until 19 August 2010. The Athlete never responded to the IAAF's letter.

**b. The London Washout Schedules Violation**

14. On 16 July 2016, Professor Richard McLaren (the "*Independent Person*" or the "*IP*") issued a first report on the allegations of systemic doping in Russia (the "*First IP Report*"). Some of the key findings of the First IP Report were that (1) the Moscow Laboratory operated, for the protection of doped Russian athletes, within a state-dictated failsafe system, described in the First IP Report as the disappearing positive methodology (the "*DPM*") and (2) the Ministry of Sport of the Russian Federation directed, controlled, and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the Russian Federal Security Service, the Center of Sports Preparation of National Teams of Russia, and both Moscow and Sochi Laboratories.
15. On 9 December 2016, the IP elaborated on the First IP Report and released a second report on the doping allegations in Russia (the "*Second IP Report*", together with the First IP Report, the "*IP Reports*"). The Second IP Report confirmed the key findings of the First IP Report and described in detail the DPM and the Washout Testing.
16. In the DPM, where the initial screen of a sample revealed an AAF, the athlete would be identified and either "SAVED" or "QUARANTINED". The AAF would typically be notified by e-mail from the Moscow Laboratory to one of the liaison persons, who would respond in order to advise whether athlete(s) should be "SAVED" or "QUARANTINED". If the athlete was "SAVED", the Moscow Laboratory would report the sample as negative in the Anti-Doping Administration & Management System ("*ADAMS*"). If the athlete was "QUARANTINED", the analytical bench work on the sample would continue and the AAF would be reported in the ordinary manner.
17. The Washout Testing was deployed in 2012 in order to determine whether the athletes on a doping program were likely to test positive at the 2012 London Olympic Games (the "*London Olympic Games*"). At that time, the relevant athletes were providing samples in official Bereg doping control kits. Even when the samples screened positive, they were automatically reported as negative in ADAMS. The Moscow Laboratory developed schedules to keep track of those athletes who were subject to Washout Testing in advance of the London Olympic Games (the "*London Washout Schedules*").
18. Within the context of the Second IP Report, the IP identified a significant number of Russian athletes who were involved in, or benefitted from, the doping schemes and practices that he uncovered (the "*Identified Athletes*"). The IP made publicly available on the IP Evidence Disclosure Package (the "*EDP*") website the evidence of the involvement of the Identified Athletes. According to the IP and the IAAF, the evidence on the EDP was retrieved from the hard-drive of Dr Rodchenkov and, after the metadata of all the documents was examined, the documents were determined to have been made contemporaneously to the events.

19. All documents contained on the EDP website were anonymised, and each Identified Athlete was attributed one or more codes substituting for their name on the relevant documents. According to the IAAF, the Athlete is one of the Identified Athletes.
20. According to the IAAF, the following information concerning the Athlete is recorded on the London Washout Schedules:  
  
Sample 2729718 collected on 17 July 2012: *“oral-turinabol 10000, boldenone, 1-testosterone (5 ng/ml)”*  
  
Sample 2730616 collected on 25 July 2012: *“oral-turinabol 4,000, boldenone 8,000 (0.6 ng/ml), 1-testosterone 15,000 (2 ng/ml)”*  
  
Sample 2727960 collected on 31 July 2012: *“Firova (...) boldenone 1 ng/ml; 1-testosterone 20 ng/ml”*
21. According to the IAAF, all samples were reported as negative in ADAMS as a result of the automatic “SAVE” for athletes featuring on the London Washout Schedules.
22. On 27 October 2017, the Athletics Integrity Unit (the “AIU”), on behalf of the IAAF, informed the Athlete that, following its letter of 28 March 2017, it had had the opportunity to review and investigate the First and Second IP Report and that it intended to refer the McLaren Evidence against the Athlete to the CAS, together with the evidence related to the Retesting Violation. The AIU granted the Athlete an opportunity to provide her explanations in respect of the McLaren Evidence against her.
23. On 17 November 2017, the Athlete disputed the allegations put forward against her.
24. On 15 January 2018, the AIU informed the Athlete that it maintained its assertion that she had committed an ADRV and that her case would be submitted to the CAS.
25. On 26 January 2018, the Athlete indicated that she preferred her case to be heard as a single hearing under Rule 38.19 of the 2016-2017 IAAF Rules.
26. On 22 February 2018, the AIU informed the Athlete that WADA did not agree to the submission of the case to a single hearing and that, therefore, the Athlete’s case would be referred to the CAS under Rule 38.3 of the 2016-2017 IAAF Rules (Sole Arbitrator of the CAS sitting as a first instance hearing panel).

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

27. On 6 April 2018, the 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 appeal arbitration rules, pursuant to Rule 38.3 of the 2016-2017 IAAF Rules. Furthermore, the IAAF requested that the matter 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.
28. On 13 April 2018, the CAS Court Office initiated the present arbitration and specified that the case had been assigned to the CAS Ordinary Arbitration Division but it would be dealt with in accordance with the appeal arbitration rules. The Respondents were 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 *fir400@yandex.ru* provided by the IAAF for the Second Respondent.
  29. On 26 April 2018, the Second Respondent requested an extension of the time limit for the filing of her answer until 29 June 2018 and provided her personal postal address.
  30. On 3 May 2018, after having duly consulted the Claimant and the First Respondent, the CAS Court Office informed that the Second Respondent's request had been granted. In addition, the CAS Court Office provided the Parties with the arbitrator's acceptance and statement of independence form signed by Mr Markus Manninen, who had been appointed as Sole Arbitrator.
  31. On 10 May 2018, the First Respondent requested an extension for the filing of its answer until 29 June 2018.
  32. On 11 May 2018, the Second Respondent challenged the appointment of Mr Manninen as a Sole Arbitrator pursuant to Article R34 of the CAS Code and requested that a replacement arbitrator be appointed by the CAS pursuant to Article R36 of the CAS Code.
  33. On 15 May 2018, the CAS Court Office granted the Claimant and the First Respondent an opportunity to provide their position with respect to the Second Respondent's challenge. The Parties were also advised that the challenge had been forwarded to the arbitrator for his comments.
  34. On 16 May 2018, after having duly consulted the Claimant and the Second Respondent, the CAS Court Office informed the Parties that the First Respondent's request for an extension had been granted. Accordingly, both Respondents were invited to submit their answers by 29 June 2018.
  35. On 22 May 2018, the First Respondent informed the CAS that considering the doubts raised in the Second Respondent's letter dated 11 May 2018 with regard to Mr Manninen's independence and impartiality, the First Respondent supports the challenge and requests the replacement of Mr Manninen. On the same day, the Claimant and Mr Manninen submitted in their respective submissions that the challenge should be rejected.

36. On 24 May 2018, the CAS Court Office invited the Respondents to inform whether they wished to maintain the challenge against the appointment of Mr Manninen. Both Respondents informed that they chose to maintain their challenges. Moreover, the Second Respondent presented two additional grounds for the challenge.
37. On 1 June 2018, the CAS Court Office informed the Parties that the ICAS Board would render an Order on applications for Mr Manninen's challenge pursuant to Article R34 of the CAS Code.
38. On 3 July 2018, the ICAS Board dismissed the challenge brought by the Second Respondent against the appointment of Mr Manninen as an arbitrator.
39. On 4 July 2018 and in accordance with Article R54 of the CAS Code, the CAS Court Office informed the Parties that Mr Manninen had been appointed as the Sole Arbitrator.
40. On 9 July 2018, the CAS Court Office informed the Parties that it had not received any answers to the Request for Arbitration or any communication from the Respondents in this regard. Furthermore, the CAS Court Office invited the Parties to inform by 16 July 2018 whether they preferred that a hearing be held or that the Sole Arbitrator issue an award based solely on the written submissions.
41. On 16 July 2018, the Claimant informed that its preference was that a hearing be held.
42. On 26 July 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the matter.
43. On 3 August 2018 and after consultation with the Parties, the CAS Court Office informed the Parties that the hearing would be held on 17 August 2018 and invited the Parties to provide the CAS Court Office with the names of all persons who would be attending the hearing on or before 8 August 2018.
44. On 9 August 2018, the CAS Court Office informed the Parties that none of the Respondents had announced any attendees at the hearing and noted that the Respondents were allowed to participate in the hearing also by video or audio conference. In addition, the CAS Court Office sent an Order of Procedure to the Parties. The Claimant's counsel signed and returned the Order of Procedure to the CAS Court Office on 14 August 2018. Both Respondents failed to return a duly signed copy of the Order of Procedure.
45. On 17 August 2018, a hearing took place at the CAS Headquarters located in Lausanne, Switzerland. The Sole Arbitrator was assisted by Ms Pauline Pellaux, CAS Counsel, and joined by Mr Ross Wenzel and Mr Nicolas Zbinden, Counsel for the Claimant.
46. During the hearing, Counsel for the Claimant made opening and closing statements and replied to the Sole Arbitrator's questions. The Sole Arbitrator ordered the Claimant to (1) clarify the reason for the marking "*Originally Created 7 December 2017*" in the Claimant's exhibit

15ter, and (2) to produce electronic copies of the London Washout Schedules. At the conclusion of the hearing, the Claimant confirmed that its right to be heard had been fully respected.

47. On 21 August 2018, the Claimant submitted "*the native London Washout Schedules as well as emails attaching them*". In addition, the Claimant explained that the doping control form in exhibit 15 had been deleted after 18 months in accordance with Annex A to the International Standard on the Protection of Privacy and Personal Information and then uploaded again in ADAMS by the Russian Anti-Doping Agency ("RUSADA") on 7 December 2017.
48. On 22 August 2018, the CAS Court Office invited the Respondents to submit their comments on the Claimant's new documents within 15 days from the receipt of the letter.
49. On 29 August 2018, the CAS Court Office requested that the Claimant provide English translations of the e-mails attaching the native London Washout Schedules. On the same day, the Claimant submitted the requested translations and the CAS Court Office forwarded them for the Respondents' attention.
50. On 18 September 2018, the CAS Court Office informed the Parties that the Respondents had not provided any comments on the Claimant's new documents within the imposed time limit.

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

51. 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.
52. The IAAF submits, in essence, the following:
  - In the IOC Decision, the IOC Disciplinary Commission determined that the Athlete had committed an ADRV (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. The Athlete did not appeal the IOC Decision.
  - In any event, Rule 32.2(a) of the IAAF Rules also forbids the presence of a prohibited substance or its metabolites or markers in an athlete's sample.
  - The presence of DHCMT metabolites and 3 $\alpha$ -hydroxy-5 $\alpha$ -androst-1-en-17-one (metabolite of 1-testosterone, 1-androstenedione or 1-androstenediol) has been found in the Athlete's A, B1, and B2 samples. DHCMT, 1-testosterone, 1-androstenedione, and 1-androstenediol are exogenous anabolic steroids that are prohibited in and out of competition under section S1.1.a. of the 2008 Prohibited List. Therefore, the ADRV

committed by the Athlete in connection with the Beijing Olympic Games is unquestionable.

- With regard to the London Washout Schedules, Rule 32.2(b) of the IAAF Rules forbids the use or attempted use by an athlete of a prohibited substance or a prohibited method. The Athlete committed violations of Rule 32.2(b) in 2012 on the basis of the London Washout Schedules.
- In the lead-up to the London Olympic Games, the Athlete underwent three official doping controls on 17, 25, and 31 July 2012, which she does not dispute. The evidence on the EDP shows that the first and second samples contained three different prohibited exogenous anabolic steroids *visz.* DHCMT, boldenone, and 1-testosterone. In the third sample, two prohibited substances *visz.* boldenone and 1-testosterone remained.
- Notwithstanding the above, all three official samples were reported as negative in ADAMS. This is in line with the findings of the Second IP Report, according to which all samples reported on the London Washout Schedules were automatically saved, i.e. reported as negative in ADAMS, by the Moscow Laboratory.
- The use of Oral-turinabol i.e. DHCMT, was endemic amongst Russian athletes during this period. Following the retesting ordered by the IOC, at least 13 Russian athletes from track and field alone were found positive for DHCMT at the 2012 London Olympic Games. As a result of the IOC retesting, they all were found to have DHCMT in their samples.
- The Athlete was using prohibited substances in the lead-up to the London Olympic Games. The prohibited substances cover a wide range of anabolic steroids. The Athlete has breached Rule 32.2(b) of the IAAF Rules.
- The violations shall be considered together as a single violation and the sanction shall be based on the violation that carries the most severe sanction. The violations based on the McLaren Evidence are governed by the 2012-2013 IAAF Rules. These rules are based on the 2009 version of the World Anti-Doping Code (the “WADC”), which introduced the notion of aggravating circumstances. Given that the Athlete had committed several ADRVs and had been part of a scheme, the IAAF is seeking the imposition of an aggravated sanction of four years of ineligibility under Rule 40.6 of the 2012-2013 IAAF Rules.
- Almost all of the aggravating factors are relevant in the present case. First, the Athlete had used a range of exogenous anabolic steroids both in connection with the Beijing Olympic Games and in the lead-up to the London Olympic Games, thereby committing multiple ADRVs. Second, the Athlete had been part of a centralised doping scheme. She provided official samples for washout testing and her official samples that did test positive for prohibited substances in the lead-up to the London Olympic Games were

automatically falsely reported as being clean. Third, the washout testing had been carried out in the run up to one of the most important events in athletics, i.e. the Olympic Games. Its aim had been to ensure that the athletes sent to the competition would not test positive, which the Athlete did not.

- In view of all the circumstances, the only appropriate period of ineligibility to be imposed on the Athlete is four years, which shall start on the date of the CAS award.
- According to the principle set out in Article 10.8 of the WADC, and transposed into the IAAF Rules, all the competitive results of an athlete obtained from the date of the first positive test through the commencement of any provisional suspension or ineligibility period, shall, “*unless fairness requires otherwise*”, be disqualified with all the resulting consequences including forfeiture of any medals, points, and prizes.
- As the first positive test, namely the one in respect of the Retesting Violation, was conducted on 20 August 2008, the principle is that all results obtained by the Athlete from such date until her provisional suspension on 9 June 2016 shall be disqualified. In view of the severity and multiplicity of the ADRVs, there is no reason not to disqualify any results based on the fairness exception in this case. The Athlete’s results should be disqualified from the doping control on 20 August 2008 until her provisional suspension on 9 June 2016.

53. 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) The Athlete is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(a) and/or Rule 32.2(b) of the IAAF Rules.*
- “(iv) A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the CAS Award, provided that it is effectively served, shall be credited against the total period of ineligibility to be served.*
- “(v) All competitive results obtained by the Athlete from 20 August 2008 through to the commencement of her provisional suspension on 9 June 2016 (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).*
- “(vi) The arbitration costs be borne entirely by the First Respondent pursuant to Rule 38.3 of the IAAF Rules or, in the alternative, by the Respondents jointly and severally.*

(vii) *The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to the IAAF's legal and other costs*".

54. 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. Neither of the Respondents participated in the hearing in person or via Skype or other means of communication. Pursuant to Articles R55 and R57 of the CAS Code, the Sole Arbitrator can nevertheless proceed to make an award in relation to the IAAF's claims.
55. Despite the lack of any 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. In particular, the Sole Arbitrator has taken into account the Athlete's main defence submission, which is included in her e-mail of 17 November 2017 addressed to the AIU. The Athlete submits, in essence, the following:
- The Athlete did not receive the IAAF's letter of March 2017 until in October 2017.
  - The IAAF's charges are based on *"the transfer to G. Rodchenkov of a number of unconfirmed files of arbitrary content to Mr. R. McLaren and the publication of these files on the site [ipevidencedisclosurepackage.net](http://ipevidencedisclosurepackage.net)"*.
  - The charges are not based on evidence and come from the IAAF, which has for many years covered the systematic use of doping by special individual athletes from different countries.
  - The notes of Dr Rodchenkov are incomprehensible. Objective evidence i.e. the Athlete's biological passport and data from ADAMS is not even presented or considered.
  - With regard to the Beijing sample, it is widely known in the scientific world that the method of detection of long-term DHCMT metabolites developed by Dr Rodchenkov is scientifically crude, unconfirmed, and incapable of distinguishing such metabolites – if they even exist in the form suggested by Dr Rodchenkov – from other substances with similar characteristics. This methodology is currently disputed before the CAS in other proceedings.
  - In preparation for the London Olympic Games, the Athlete passed a number of doping tests in accordance with the established procedure, namely: (1) sample 2729718 from 17 July 2012, (2) sample 2730616 from 25 July 2012, and (3) sample 2727960 from 31 July 2012.
  - The Athlete does not know why Dr Rodchenkov decided to create some files indicating that these samples contained prohibited substances and / or their metabolites.

- The IAAF did not address the Athlete's blood passport nor her steroid passport, "*which destroyed the 'Rodchenkov's tales' about the disappearing positive results of doping tests*".
- It is a strange approach to take into account some printouts from Excel instead of ADAMS data.
- In case CAS 2016/A/4486, absolutely similar charges connected with the alleged detection of Dr Rodchenkov in July 2012 of prohibited substances in the official passed samples of the Russian track and field athlete, and based on same documents and affidavit of Professor McLaren, were rejected by the CAS arbitrators as unfounded and having extremely little evidentiary power.

56. The Respondents did not submit any requests for relief.

## V. JURISDICTION AND APPLICABILITY OF THE APPEAL ARBITRATION PROCEDURE

57. The IAAF maintains that the jurisdiction of the CAS derives from Rule 38.3 of the 2016-2017 IAAF Rules, effective from 1 November 2015.

58. 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. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. 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. (...)"*

59. The suspension of RUSAF's IAAF membership was confirmed on the occasion of the IAAF Council meeting in Monaco on 26 November 2015. On 17 June 2016, 1 December 2016, 6 February 2017, 2 July 2017, and 31 July 2017, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership and the IAAF Congress maintained the suspension of RUSAF at its meeting on 3 August 2017. On 26 November 2017, on 6 March 2018 and on 27 July 2018, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership, and therefore RUSAF's suspension remained 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.

60. 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.
61. The Sole Arbitrator notes that the Athlete is an International-Level Athlete as defined in the IAAF Anti-Doping Rules and that RUSAF is indeed prevented from conducting a hearing in the Athlete's case within the deadline set by Rule 38.3 of the 2016-2017 IAAF Rules. The Sole Arbitrator confirms that the IAAF was therefore permitted to refer the matter directly to a sole arbitrator appointed by the CAS, subject to an appeal to CAS in accordance with Rule 42 of the 2016-2017 IAAF Rules. Finally, the Sole Arbitrator observes that the Respondents have not challenged the jurisdiction of the CAS.
62. Further, although the present procedure is a first-instance procedure that has consequently been assigned to the Ordinary Arbitration Division, in accordance with Rule 38.3 of the 2016-2017 IAAF Rules, the rules of the CAS appeal arbitration procedure shall apply.
63. It follows that the CAS has jurisdiction to adjudicate and decide the present matter and that the present case will be dealt with in accordance with the appeals arbitration rules.

## **VI. ADMISSIBILITY**

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

## **VII. APPLICABLE LAW**

65. 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 are subject to the 2016-2017 edition of the IAAF Rules. The IAAF further submits that for the substantive matters, the Athlete's ADRV is subject to the rules in place at the time of the alleged ADRV. Thus, in respect of the Retesting Violation, the applicable IAAF Rules are the 2008 IAAF Rules, and in respect of the London Washout Schedule Violation, the applicable IAAF Rules are the 2012-2013 IAAF Competition 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 an issue.
66. RUSAF or the Athlete did not put forward any specific position in respect of the applicable law.
67. Article R58 of the CAS Code provides as follows:

*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the*

*federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

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

69. The relevant parts of Article 1.7 of the IAAF Anti-Doping Rules effective from 6 March 2018 (the “IAAF ADR”) read as follows:

*“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 (...)*

*(d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping”.*

70. Article 13.9.4 of the IAAF ADR states as follows:

*“In all CAS appeals involving the IAAF, the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Rules and Regulations). In the case of conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence”.*

71. 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”.*

72. The transitional provisions of Article 21.3 of the IAAF ADR read as follows:

*“Any case pending prior to the Effective Date, or brought after the Effective Date but based on an Anti-Doping Rule Violation that occurred before the Effective Date, shall be governed, with respect to substantive matters, by the predecessor version of the anti-doping rules in force at the time the Anti-Doping Rule Violation occurred and, with respect to procedural matters by (i) for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules and (ii) for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules. Notwithstanding the foregoing, (i) Article 10.7.5*

*of these Rules shall apply retroactively, (ii) Article 18 of these Rules shall also apply retroactively, unless the statute of limitations applicable under the predecessor version of the Rules had already expired by the Effective Date; and (iii) the relevant tribunal may decide it appropriate to apply the principle of *lex mitior* in the circumstances of the case”.*

73. 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.
74. Pursuant to Article 21.3 of the IAAF ADR and taking into account that the Athlete’s ADRVs were allegedly committed prior to 3 April 2017, the Sole Arbitrator is satisfied that procedural matters are governed by the 2016-2017 IAAF Competition Rules.
75. With respect to the rules applicable to the substantive aspects of the case, the Sole Arbitrator notes that the Athlete’s contended violations had occurred in August 2008 and in July 2012. Consequently, pursuant to Article 21.3 of the IAAF ADR, the 2008 IAAF Rules will apply to the substantive matters of the Retesting Violation, and the 2012-2013 IAAF Rules to the substantive matters of the London Washout Schedule Violation, subject to the possible application of the principle of *lex mitior*.
76. As for the sanctions to be applied, the provisions concerning ineligibility in the 2008 and 2012-2013 IAAF Rules are clearly *lex mitior* in comparison to the IAAF ADR. The 2008 and 2012-2013 IAAF Rules allow the Sole Arbitrator to order a period of ineligibility of two years for an intentional use of a banned substance, whereas the IAAF ADR set a standard sanction of four years for such violation.
77. With regard to the commencement of the ineligibility period, where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete, Article 10.10.2(c) of the IAAF ADR allows a disciplinary panel to deem that the period of ineligibility shall start as early as the date the ADRV occurred. In contrast, the language of the 2008 and 2012-2013 IAAF Rules does not in itself produce such outcome. It follows that, in principle, the IAAF ADR lead to a more lenient outcome for the athlete in this respect. However, it has been accepted in the CAS case law that if an athlete intentionally administers substances that make analysing the sample time-consuming, the delay is attributable to the athlete (CAS 2010/A/2041 para. 179, CAS 2016/A/4648 para. 151 and CAS 2017/O/5376 para. 64). Such a finding is also consistent with the comment concerning Article 10.11.1 of the WADC 2015, which generally underlines that discovering and substantiating a doping offence may require a long time, in particular if the athlete endeavours to prevent the detection. In conclusion, the IAAF ADR are not *lex mitior* in comparison to the 2008 or 2012-2013 IAAF Rules in this respect, either.
78. As to the disqualification of results, both the 2008 IAAF Rules (Rule 39.4) and the IAAF ADR (Article 10.8) require the annulment of all competitive results of the athlete obtained from the date the sample in question had been collected through to the commencement of any provisional suspension or ineligibility period, unless fairness requires otherwise. The Sole Arbitrator further notes that CAS panels have deemed that Rule 40.8 of the 2012-2013 IAAF

Rules also includes a fairness exception, even though not explicitly mentioned therein (see e.g. CAS 2016/O/4464), or at least that it cannot be excluded that a general principle of “fairness” may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect (see e.g. CAS 2015/A/4005).

79. Based on the above considerations, the most favourable versions of the IAAF rules for the Athlete are the 2008 and 2012-2013 IAAF Rules, which will be applied to the substantive aspects of the matter at hand.

### VIII. MERITS

80. Considering all Parties’ submissions, the main issues to be resolved by the Sole Arbitrator are the following:
- A. Did the Athlete commit an anti-doping rule violation in the Beijing Olympic Games, i.e. did she violate Rule 32.2(a) of the 2008 IAAF Rules?
  - B. Did the Athlete commit an anti-doping rule violation prior to the London Olympic Games in 2012, i.e. did she violate Rule 32.2(b) of the 2012-2013 IAAF Rules?
  - C. In case either or both questions are answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

#### A. Did the Athlete Commit an ADRV in the Beijing Olympic Games in 2008?

81. The Sole Arbitrator observes that the following general regulatory framework is relevant to the merits of the case at hand.
82. 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 recognise 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 Rules 37 and 38”.*

83. Rule 32.2(a) of the 2008 IAAF Rules reads, in the essential parts, 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)".*

84. While the burden of proof is – according to Swiss law – a question of substantive law, the standard of proof is a question of procedural law (see CAS 2017/A/5045 para. 83). The Sole Arbitrator notes that the rules governing the burdens and standards of proof are in all relevant respects identical in the 2008, 2012-2013 and 2016-2017 editions of the IAAF Rules. Rules 33.1 and 33.2 of the 2016-2017 IAAF Rules, so far as material, stipulate the following:

*"Burdens and Standards of Proof*

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

*2. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability".*

85. The relevant parts of Rule 33.3 of the 2016-2017 IAAF Rules read as follows:

*"Methods of Establishing Facts and Presumptions*

*3. Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information.*

*The following rules of proof shall be applicable in doping cases:*

*(a) Analytical methods or decision limits approved by WADA after consultation with the relevant scientific community and which have been the subject of peer review are deemed to be scientifically valid. Any Athlete or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. (...)"*

86. The Sole Arbitrator observes that, in its attempt to establish the Athlete's ADRV in 2008, the IAAF primarily relies on the IOC Decision confirming an ADRV by the Athlete. Secondly, and *ex abundanti cautela*, the IAAF relies on the AAF in the Athlete's A, B1, and B2 samples collected on 20 August 2008.

87. The Athlete's key defence against the IAAF's claims based on the retest of the Athlete's sample given in connection with the Beijing Olympic Games is the challenge of the relevant analytical method. More precisely, the Athlete has questioned the validity of the method to detect long-term metabolites of DHCMT and particularly invoked the CAS proceedings that were pending at the time of the Athlete's submission dated 17 November 2017.
88. The Sole Arbitrator first notes that pursuant to Rule 46.2 of the 2016-2017 IAAF Rules, in the case of an adjudication of the IOC arising from an ADRV occurring at the Olympic Games, the IAAF shall recognise the finding of an ADRV once it becomes final under applicable rules. As shown by the IOC Decision, the IOC has adjudicated the Athlete's ADRV, which occurred at the Beijing Olympic Games. The Respondents have not even alleged that the IOC Decision would not be final.
89. The Sole Arbitrator also observes 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 tissues or fluids. The IAAF has presented three doping control reports issued by the Laboratory on 4 May 2016, 2 June 2016, and 24 June 2016. According to said reports, the Laboratory detected the presence of DHCMT metabolite and 1-testosterone metabolite in the Athlete's A, B1, and B2 samples.
90. As noted above, the Athlete has disputed the method to detect long-term metabolites of DHCMT. However, she has not challenged the detection method of 1-testosterone metabolite. Therefore, the Sole Arbitrator finds that the laboratory results with respect to the 1-testosterone metabolite are undisputed and must be considered reliable.
91. Concerning the DHCMT analysis, the Sole Arbitrator observes that the Athlete has not even alleged that she has followed the procedure set out in Rule 33.3(a) of the 2016-2017 IAAF Rules. Therefore, the analytical method must be considered scientifically valid pursuant to Rule 33.3(a) of the 2016-2017 IAAF Rules.
92. The Sole Arbitrator further notes that the validity of the analytical method to detect long-term DHCMT metabolites was confirmed by the CAS subsequent to the proceedings invoked by the Athlete (CAS 2016/A/4803, CAS 2016/A/4804, and CAS 2017/A/4983, arbitral award rendered on 25 July 2018). In brief, the CAS Panel found that the athletes in said cases had been unable to prove that the testing methods for long-term metabolites of DHCMT adopted by the laboratories, which led to the positive findings for DHCMT in Beijing Olympic Games and London Olympic Games, were not scientifically valid.
93. In conclusion, based on the above reasoning, 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. Therefore, a sanction may be imposed on the Athlete both under Rule 46.2 of the 2016-2017 IAAF Rules and under Rule 32.2(a) of the 2008 IAAF Rules.

**B. Did the Athlete Commit an ADRV Prior to the London Olympic Games in 2012?**

**a. Preliminary Remarks**

94. Rule 32.2(b) of the 2012-2013 IAAF Rules reads, in the essential parts, as follows:

*“Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:*

*(...)*

*(b) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*

*(i) it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method”.*

95. “Use” has been defined in the 2012-2013 IAAF Rules as follows:

*“The utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method”.*

96. The Sole Arbitrator notes that in order to establish an ADRV under the IAAF Rules, the Sole Arbitrator must be comfortably satisfied that a violation has taken place.

97. The IAAF has based its claims on the Athlete’s ADRV of 2012 under Rule 32.2(b) of the 2012-2013 IAAF Rules on the conclusions drawn by the IP in the IP Reports and, in particular, on three London Washout Schedules i.e. Excel spreadsheets. The tables are somewhat different when compared to each other, but they all contain at least (1) numbers, which, according to the IAAF, refer to the 7-digit sample codes, (2) a date, and (3) a list of prohibited substances connected to some of the sample numbers. The lines of the London Washout Schedules concerning the Athlete contain the following information:

“8962	2729718	f	17.07.2012	Oral-turinabol 10000, boldenone, 1-testosterone (5 ng/ml)”
“9256	2730616	f	25.07.2012	Oral-turinabol 4,000, boldenone 8,000 (0.6 ng/ml); 1-testosterone 15,000 (2 ng/ml)”
“9469	2727960	Firova	EPO 1.006	Moscow 31.07.2012 Boldenone 1 ng/ml; 1-testosterone 20 ng/ml”

98. According to the IAAF, the prohibited substances listed in the table had been detected from the respective samples by the Moscow Laboratory in the initial screening. However, because of the DPM, the samples had been automatically reported as negative in ADAMS.

99. The Athlete has disputed the authenticity of the London Washout Schedules and challenged the existence of the DPM. The Athlete puts forth that Dr Rodchenkov has fabricated the London Washout Schedules and calls the DPM “*Rodchenkov’s tales*”. In the Athlete’s view, the London Washout Schedules cannot serve as evidence of ADRVs against her.
100. In the following, the Sole Arbitrator will assess whether the London Washout Schedules should be considered reliable thereby indicating that the Athlete had used prohibited substances in violation of Rule 32.2(b) of the 2012-2013 IAAF Rules in July 2012. The assessment entails an evaluation on the alleged unreliability of the ADAMS data, which is conflicting with the London Washout Schedules.
101. The Athlete expressly admits that she has provided the three samples in question on 17, 25, and 31 July 2012 and that the sample numbers 2729718, 2730616, and 2727960, respectively, are correct. Thus, the issue boils down to the question of which one of the two conflicting sets of evidence should be held reliable: (1) the ADAMS entries showing that the three samples were negative or (2) the London Washout Schedules, which suggest that the Athlete had used, knowingly or unknowingly, banned substances. The IAAF has disputed the accuracy of the ADAMS entries based essentially on the findings described in the IP Reports, whereas the Athlete has challenged the reliability of the London Washout Schedules and invoked her clean ADAMS record.
102. As a preliminary matter, the Sole Arbitrator will address the Second IP Report as a ground for establishing an ADRV based on an alleged use of a prohibited substance or method.

***b. The Second IP Report***

103. The Second IP Report confirms the findings of the First IP Report. Accompanying the Second IP Report is a release of the non-confidential evidence that the IP has examined, named EDP. With regard to the IP’s investigative method, the IP conducted, among other things, cyber and forensic analysis of documentary evidence retrieved from hard drives, backups, and e-mails.
104. As to the sufficiency of the evidence to prove an ADRV by an individual athlete, the Second IP Report (pages 35-36) states that “[t]he different types of evidence provided with respect to any individual athlete are like strands in a cable. It will be up to each Results Management Authority to determine whether the provided strands of evidence, standing alone or together build a sufficiently strong cable to support an ADRV in an individual case”.
105. As noted in the Second IP Report and as stipulated in the IAAF Rules, an ADRV against an athlete may be established by any reliable means. As relevant to the IP’s investigation, according to the Second IP Report, reliable means include (1) the contextual evidence, which identifies how the athlete fits into the doping program established by the IP investigation and (2) Initial Testing Procedure (the “TTP”) screen of the Moscow Laboratory indicating possible prohibited substances.

106. The Sole Arbitrator finds that the combination of and the different types of facts provided by the Second IP Report with respect to any individual athlete are circumstantial evidence that may be used to establish an ADRV under the IAAF Rules (see also CAS 2017/O/5039 para. 91). However, the Sole Arbitrator underlines that whether there is sufficient evidence to establish an ADRV must be considered separately in each individual matter.
107. In the following, the Sole Arbitrator will consider whether there is sufficient evidence in the present matter to conclude, to the Sole Arbitrator's comfortable satisfaction, that the Athlete did violate Rule 32.2(b) of the 2012-2013 IAAF Rules.

**c. *The Findings of the Sole Arbitrator***

108. Customarily, a hearing panel would adhere to the information in the official documents and entries made by different anti-doping authorities. However, the present matter cannot be considered a normal anti-doping case. Broadly speaking, the allegations against the Athlete based on the London Washout Schedules relate to extensive doping practices in the Russian sports in the 2010s. Indeed, it has been established in a number of other connections that the Russian anti-doping regime was at that time in part corrupted, which eventually led to various different consequences, including to the revocation of the accreditation of the Moscow Laboratory and to the declaration that RUSADA had been non-compliant in November 2015. Therefore, the Sole Arbitrator finds that the ADAMS entries by the Moscow Laboratory do not *per se* enjoy unreserved reliability. The assessment relating to the reliability of the evidence before a hearing panel must be made in light of all the facts and circumstances of an individual case.
109. The Sole Arbitrator notes that there is considerable evidence supporting the IAAF's position on the authenticity and reliability of the London Washout Schedules and, conversely, on the unreliability of the ADAMS entries carried out by the Moscow Laboratory.
110. First, the IAAF has, at the request of the Sole Arbitrator, submitted nine native London Washout Schedules, including three London Washout Schedules containing the codes of the Athlete's samples. Put differently, the Sole Arbitrator has had in his use the electronic copies of the Excel spreadsheets in question, instead of mere scans of redacted documents. The metadata (properties) of the Excel file containing information on the Athlete's sample 2729718 of 17 July 2012 includes the following particulars:

<i>"Company</i>	<i>Moscow Antidoping Lab</i>
<i>Related Dates</i>	
<i>Last Modified</i>	20.7.2012 (...)
<i>Created</i>	20.7.2012 (...)
<i>Last Printed</i>	20.7.2012 (...)

*Related People*

(...)

*Author*

*Tim Sobolevsky*

*Last Modified By*

*Tim Sobolevsky*".

111. The properties of the two other relevant native London Washout Schedules reveals similar facts. According to the metadata of the Excel file containing information on the Athlete's sample 2730616 collected on 25 July 2012, the file had been created on 26 July 2012 and last modified on the same date. The author and the last modifier of the file is Mr Sobolevsky.
112. The properties of the third native London Washout Schedule containing remarks on the Athlete's sample 2727960 of 31 July 2012 indicates that the document had been created on the same date and also last modified on the same date. The author and modifier of the document is, once again, Mr Sobolevsky.
113. The Sole Arbitrator takes note that the Respondents have not disputed the authenticity of the native London Washout Schedules or the content of their metadata even though they have been specifically provided with such an opportunity.
114. Based on the above, the Sole Arbitrator finds that the three native London Washout Schedules and their metadata are a strong indication that the London Washout Schedules are authentic, i.e. that they have been drafted soon after the sample taking and that they have been created by Mr Sobolevsky, who worked in Dr Rodchenkov's team in the Moscow Laboratory. His name also appears in two e-mails copied to the Second IP Report (pages 53 and 55), which is yet another indication that he was involved in the DPM. Conversely, the metadata does not support the view that the London Washout Schedules would have been drafted either by Dr Rodchenkov, as suggested by the Athlete, or at a significantly later date.
115. Second, the Sole Arbitrator pays attention to the three native e-mails submitted by the IAAF. These are e-mails sent by Mr Sobolevsky on 19 July 2012, as well as on 20 July 2012. A different London Washout Schedule was attached to each e-mail. The last one contained a London Washout Schedule showing, among other things, the analytical results of the Athlete's sample 2729718 collected on 17 July 2012.
116. The properties of each e-mail indicate that they are contemporaneous with the London Washout Schedules and the relevant doping tests, i.e. from July 2012. Put differently, they do not seem to be fabricated at a later date. The Respondents have not commented on the e-mails or their properties even though they were specifically provided with an opportunity to do so.
117. In addition to the metadata, the Sole Arbitrator has taken note of the content of the e-mails. In the first e-mail with the heading "*athletics*", Mr Sobolevsky writes "*here they are, the heroes*". In the second e-mail with the heading "*marked athletics*", he writes that "*here I marked samples (the most remarkable ones) which YD requested to get the names for first. Apart from that, it's the same list as in the previous file*". In the third e-mail with the heading "*athletics kizlovodsk*" on 20 July 2012, he

writes that *“the situation in Kislovodsk is more satisfactory but it would be best to check those who have something once again”*.

118. The content of the e-mails appears to indicate that their recipient was expecting to receive them and the attachments thereto. In other words, more than one person was involved in the operation. The e-mails also suggest that the attached documents concerning *“samples”* – London Washout Schedules – list tested athletes and their samples and that some samples have produced unsatisfactory analytical results. Finally, the e-mails show that the analytical results of the athletes’ samples had been closely monitored in July 2012.
119. These logical e-mail cover letters support the authenticity of the London Washout Schedules. The IAAF has established who created the London Washout Schedules as well as the related e-mails and when they were created. The purpose of said documents can also be inferred from the content of the spreadsheets and the e-mails. The Sole Arbitrator is persuaded by the IAAF’s argument that sending a spreadsheet with untrue remarks relating to dubious substances by a contemporaneous e-mail from the Moscow Laboratory would not make sense.
120. Third, the Sole Arbitrator observes that there is (1) a solid negative correlation between the negative ADAMS reports and the content of the London Washout Schedules as well as (2) a strong positive correlation between the content of the London Washout Schedules and the positive analytical results of the reanalysis of the samples given by the same Russian athletes in connection with the London Olympic Games.
121. Indeed, the IAAF has submitted ten negative ADAMS reports regarding samples given by Russian athletes other than the Athlete in Russia in July 2012. However, these samples appear on the London Washout Schedules as positive, among other things, for Oral-turinabol, i.e. DHCMT. The sample codes, collection dates, and locations of the sample collections in the ADAMS reports perfectly correspond to the London Washout Schedules. Thus, the two sources can be reliably compared.
122. The following table illustrates that the negative ADAMS entries are in contradiction with the London Washout Schedules.

Negative ADAMS report (sample code, date, city)	London Washout Schedules (content, EDP code)
1. 2729874, 16 July 2012, Novogorsk	<i>“oral-turinabol 30000”</i> (EDP0019_T)
2. 2729859, 16 July 2012, Novogorsk	<i>“oral-turinabol 10000, desoxymethyltestosterone 250000, blood transfusion? (phthalates)”</i> (EDP0019_T)
3. 2730585, 16 July 2012, Novogorsk	<i>“oral-turinabol 20000”</i> (EDP0019_T)
4. 2727556, 17 July 2012, Kislovodsk	<i>“oxandrolone 20000, oral-turinabol 20000”</i> (EDP0020_T)

- |     |                                  |                                                                                                                          |
|-----|----------------------------------|--------------------------------------------------------------------------------------------------------------------------|
| 5.  | 2727809, 21 July 2012, Novogorsk | <i>“methasterone 230,000; oral-turinabol 10,000; desoxymethyltestosterone 30,000”</i><br>(EDP0021_T)                     |
| 6.  | 2729827, 25 July 2012, Novogorsk | <i>“oral-turinabol 4,000”</i> (EDP0023_T)                                                                                |
| 7.  | 2728963, 25 July 2012, Novogorsk | <i>“methasterone 160,000; oral-turinabol 400,000; oxandrolone 5,000; desoxymethyltestosterone 15,000”</i><br>(EDP0023_T) |
| 8.  | 2728437, 25 July 2012, Novogorsk | <i>“methasterone 90,000; oral-turinabol 12,000; desoxymethyltestosterone 10,000”</i><br>(EDP0023_T)                      |
| 9.  | 2728058, 25 July 2012, Moscow    | <i>“oral-turinabol 15,000”</i> (EDP0023_T)                                                                               |
| 10. | 2729145, 29 July 2012, Podolsk   | <i>“oral-turinabol 200,000; oxandrolone 5,000”</i><br>(EDP0025_T)                                                        |
123. In addition, these 10 Russian athletes who, according to the London Washout Schedules, gave positive samples prior to the London Olympic Games – which were however reported as negative in ADAMS – have in the London Olympic Games given samples that were found positive for long-term metabolites of DHCMT in the subsequent retesting. The Sole Arbitrator finds that this striking combination of evidence is a strong indication that the negative ADAMS entries were in fact false and that at least in these ten cases, the Moscow Laboratory applied the DPM. The Sole Arbitrator has not been provided with detailed arguments or persuasive evidence justifying a conclusion that contrary to the findings regarding the ten Russian athletes addressed above, the three ADAMS reports concerning the Athlete were in fact accurate and the contemporaneous London Washout Schedules had been fabricated in her case.
124. The Sole Arbitrator is mindful of the fact that the Athlete has not given a positive doping sample in connection with the London Olympic Games. However, as explained by the IAAF during the hearing, the Athlete only gave a blood sample for the purposes of the Athlete Biological Passport in the London Olympic Games. Therefore, the lack of a positive sample in the London Olympic Games does not signify that the Athlete had not used prohibited substances in July 2012.
125. Fourth, the Sole Arbitrator notes that the existence of the DPM has been confirmed in previous CAS awards. For example, in CAS OG 16/009, the Panel noted as follows:
- “7.10 (...) the IWF based its decision on the information in the Independent Person’s Report (hereinafter, “McLaren Report”). A centrepiece of this report is the finding concerning the so-called “Disappearing Positive Methodology”. (...)*
- 7.11 (...) The Panel also finds that the information on which the IWF based its decision is – contrary to what the Applicant has submitted – on its face is [sic] sufficiently reliable. First, the Panel notes that the*

*findings of the McLaren Report in relation to the “Disappearing Positive Methodology” meet – according to the report – a high threshold, because the standard of proof that was applied was “beyond reasonable doubt”.*

*7.12 The Panel further notes that the findings of the McLaren Report were taken seriously by the IOC and lead to the IOC Executive Board’s decision dated 24 July 2016 that enacted eligibility criteria specifically for Russian athletes, which is unique in the history of the Olympic Games. Also the findings were endorsed by WADA, the supreme authority in the world of sport to lead and coordinate the fight against doping and by other international federations, such as the IAAF. Furthermore, the information contained in the McLaren Report is also corroborated by the reanalysis of the athlete’s samples at the London and Beijing Olympics. All nine 9 [sic] Russian athletes have tested positive for the (same) substance Turinabol. This is a strong indication that they were part of a centrally dictated program. (...)”.*

126. In summary, based on the above grounds and having duly considered the arguments put forward by each Party, the Sole Arbitrator finds that the entries concerning the Athlete in the London Washout Schedules shall be considered reliable and the respective ADAMS entries by the Moscow Laboratory inaccurate. The Respondents have not established that the London Washout Schedules would be fictitious.
127. Because the Sole Arbitrator has had in his use the native London Washout Schedules and three native e-mails with which London Washout Schedules have been sent, the Sole Arbitrator did not need to rely in this respect on the indirect evidence, i.e. the IP Reports, to a substantial extent. However, the Sole Arbitrator notes that generally speaking, the relevant parts of the IP Reports seem to coincide with the direct evidence provided for the Sole Arbitrator in the course of this arbitration thereby strengthening the IAAF’s arguments.
128. 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 (see CAS 2016/A/4745 para. 43 and the sources mentioned therein). The challenges made by the Athlete do not meet this threshold. As noted above, the Athlete has disputed the reliability of the London Washout Schedules before this arbitration proceeding commenced. However, her criticism towards the London Washout Schedules and the IP Reports was not particularly specific, and more importantly, it remained completely unsubstantiated. The Athlete has not proffered any detailed explanation as to why her name and the codes of three of her doping test samples have been connected to a number of prohibited substances in a spreadsheet compiled by the Moscow Laboratory in July 2012. The lack of any specificity significantly weakens the credibility of the Athlete’s arguments.
129. It is also noteworthy that the Respondents did not challenge the IAAF’s position in the course of this arbitration but chose to remain completely passive from the early stages of these proceedings. The Respondents have not filed answers or submitted any exhibits. Neither have they nominated witnesses or experts or requested to be orally heard although they were provided with an ample opportunity to do so. Due to lack of the Respondents’ detailed counterarguments and counterevidence, the IAAF’s evidence stands practically uncontradicted in this particular matter.

130. In conclusion, the Sole Arbitrator finds that the IAAF has established, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete has committed an ADRV in July 2012 prior to the London Olympic Games in violation of Rule 32.2(b) of the 2012-2013 IAAF Rules by using three prohibited substances, *viz.* DHCMT, boldenone, and 1-testosterone.

**C. If an ADRV Has Been Committed, What Is the Sanction?**

**a. *The Duration of the Ineligibility Period***

131. The Sole Arbitrator observes that in the opinion of the IAAF the two ADRVs should not be considered multiple violations. As a result, the imposed sanction shall be based on the violation carrying the most severe sanction. The IAAF submits that in this respect the ADRV arising from the London Washout Schedules carries the more severe sanction.

132. The Sole Arbitrator has concluded that the Athlete has violated Rule 32.2(a) of the 2008 IAAF Rules and Rule 32.2(b) of the 2012-2012 IAAF Rules. The Sole Arbitrator finds that while the standard sanctions arising from the two violations are equal, the ADRV arising from the London Washout Schedules is the one that could carry the more severe sanction, because the 2012-2013 IAAF Rules introduced the notion of aggravating circumstances enabling a panel to increase the sanction up to four years.

133. Rule 40.2 of the 2012-2013 IAAF Rules reads, in so far as relevant, as follows:

*“The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) (...), unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:*

*First violation: Two (2) years’ Ineligibility”.*

134. Rule 40.6 of the 2012-2013 IAAF Rules on aggravating circumstances reads, in the relevant parts, as follows:

*“If it is established in an individual case involving an anti-doping rule violation (...) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.*

*(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s)*

*beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility”.*

135. In addition, Rule 40.7(d)(i) of the 2012-2013 IAAF Rules expressly sets out that *“the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)”*.
136. The IAAF maintains that almost all of the aggravating factors are relevant in the present case: the Athlete had used a range of exogenous anabolic steroids both within the context of the Beijing Olympic Games and in the lead-up to the London Olympic Games, and the Athlete had been part of a centralised doping scheme. In the IAAF’s opinion, this justifies the imposition of an aggravated period of ineligibility of four years.
137. The Respondents did not put forward any specific position in respect of the aggravating circumstances.
138. The Sole Arbitrator agrees with the IAAF that many of the aggravating circumstances listed in Article 40.6(a) of the 2012-2013 IAAF Rules are relevant in the Athlete’s case.
139. First, the Sole Arbitrator accepts that the Athlete committed the ADRV of July 2012 as part of a doping plan or scheme both individually and involving a conspiracy or common enterprise to commit ADRVs. As noted elsewhere in this award, the Athlete had used multiple prohibited substances in connection with the London Olympic Games. The concentrations of the prohibited substances found in the Athlete’s samples in July 2012 demonstrate a carefully planned doping program. By way of an example, according to the London Washout Schedules, DHCMT had washed out from the Athlete’s system before the London Olympic Games.
140. In addition, the IP Reports conclude that an *“institutional conspiracy”* existed within Russia also in relation to the London Olympic Games (see page 76 of the First IP Report and page 1 of the Second IP Report). The IP has summarised that *“the Russian Olympic team corrupted the London Games 2012 on an unprecedented scale”*, and that the *“corruption involved the ongoing use of prohibited substances, manipulation of samples and false reporting into ADAMS”* (pages 77-78 of the Second IP Report). The Athlete’s name and three doping test sample codes appear on three London Washout Schedules. Indeed, the fact that the Moscow Laboratory, which compiled the spreadsheets, is aware of the Athlete’s name in connection with the sample code is another factor indicating a corrupted anti-doping regime. Moreover, the Athlete has administered DHCMT, the use of which was widespread in Russia.
141. Second, the Sole Arbitrator finds that the Athlete has committed two ADRVs four years apart. Also taking into consideration that the concentration of 1-testosterone had first decreased from 5 ng/mL to 2 ng/mL between 17 July 2012 and 25 July 2012, and then increased to 20 ng/mL by 31 July 2012, the Sole Arbitrator is comfortably satisfied that the Athlete had used 1-testosterone more than once in July 2012. In conclusion, instead of an isolated single administration, the Athlete had used prohibited substances on multiple occasions.

142. Third, the Athlete has administered multiple prohibited substances *viz.* DHCMT and 1-testosterone in 2008 and DHCMT, boldenone, and 1-testosterone in 2012. The Sole Arbitrator further notes that all of the substances administered by the Athlete are well-known to enhance sporting performance.
143. Finally, the Sole Arbitrator reiterates that RUSAF or the Athlete have not filed any submissions with the CAS with regard to the aggravating circumstances, the length of the ban, or any other consequence for the ADRV governed by the 2008 or the 2012-2013 IAAF Rules. In particular, the Athlete has not submitted to the CAS that the period of ineligibility should be shortened for some reason. According to the IOC Decision, the Athlete also has not provided any explanation for the presence of DHCMT and 1-testosterone in her sample in front of the IOC Disciplinary Commission.
144. On the basis of all of the above, the Sole Arbitrator finds that the IAAF has been able to convince him to his comfortable satisfaction that the Athlete did commit the ADRV in July 2012 as part of a doping plan or scheme and that she had used multiple prohibited substances on multiple occasions.
145. Considering the seriousness of the Athlete's ADRVs and the fact that many aggravating factors listed in Rule 40.6(a) of the 2012-2013 IAAF Rules are relevant in the present case, the Sole Arbitrator finds that a period of ineligibility of four (4) years is appropriate in relation to the degree and severity of the Athlete's misbehaviour.

***b. Commencement of the Ineligibility Period and Credit for Provisional Suspension***

146. With respect to the date of commencement of the sanction, 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 IAAF has not elaborated the issue further. The Respondents have not addressed the matter during the CAS proceedings either.
147. The Sole Arbitrator is guided by Rule 40.10 of the 2012-2013 IAAF Rules, titled "*Commencement of Period of Ineligibility*", which stipulates as follows:
- "Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served"*.
148. The Sole Arbitrator finds that for practical reasons and in order to avoid any eventual misunderstanding, the period of ineligibility will start on 9 June 2016, the date of commencement of the provisional suspension, and not on the date of this award.

**c. Disqualification of Results**

149. The IAAF has requested that all competitive results obtained by the Athlete from and including 20 August 2008 until 9 June 2016 be disqualified. The IAAF has submitted that in view of the severity and multiplicity of the ADRVs, there is no reason not to disqualify any results based on the fairness exception contained in the WADC and the IAAF Rules.
150. The IAAF has justified its request by putting forth that the Athlete had committed two severe ADRVs with four-year interval, that the ADRVs involved three different substances, that the substances have long-term effects on the Athlete's sporting performance, that the second ADRV had been committed in an organised scheme, wherefore the fairness exception should not be applied at all. Moreover, the IAAF has suggested that the Athlete's case is not comparable to a single violation case in which the IAAF's policy is to request a disqualification of two years (when the ineligibility period is two years).
151. The Sole Arbitrator observes that the Respondents have chosen not to submit any claims or arguments with respect to the disqualification of results.
152. Rule 39.4 of the 2008 IAAF Rules, applicable to the Retesting Violation, reads as follows:  
*"(...) where an athlete has been declared ineligible under Rule 40, 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 (...), including the forfeiture of all titles, awards, medals, points and prize and appearance money".*
153. Rule 40.8 of the 2012-2013 IAAF Rules, applicable to the London Washout Schedule violation, does not explicitly contain a fairness exception. However, CAS panels have previously deemed that Rule 40.8 of the 2012-2013 IAAF Rules, or its equivalents, include a fairness exception (e.g. CAS 2016/O/4464 and CAS 2017/O/4980) or at least that it cannot be excluded that a general principle of "fairness" may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect (e.g. CAS 2015/A/4005 and CAS 2017/O/5332).
154. The Sole Arbitrator finds that the general principle of fairness must prevail. Thus, the next issue to be determined by the Sole Arbitrator is the length of the disqualification period.
155. Pursuant to the 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. However, results may remain valid if fairness so requires in the circumstances of each case. 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.
156. Fairness exception is an embodiment of the principle of proportionality, which according to the established CAS case law must be applied in doping cases. The sanction to be imposed for

an ADRV must be proportional considering the length of the ineligibility period and the disqualification of results, together and alone. Indeed, although the main purpose of the disqualification of results is not to punish the transgressor, but rather to correct any unfair advantage and to remove any tainted performances from the record (cf. CAS 2016/A/4464 para. 194, CAS 2016/O/4469 para. 176 and CAS 2017/O/5039 para. 132), having regard to the fact that the disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction (CAS 2016/A/4469 para. 176).

157. There is a mountain of CAS case law on the disqualification of results and the fairness exception. With regard to pure retesting cases concerning a single positive sample – which this case is not about – the Sole Arbitrator notes that it is the IAAF’s policy to connect the disqualification period to the length of the ban (CAS 2016/O/4463 para. 138, CAS 2017/O/5330 para. 70 and CAS 2017/O/5332 para. 93). The logic there is that the athlete would not have been able to compete for such a period, had the ADRV been detected immediately. In cases where an athlete has engaged in doping practices for an extended period of time, the CAS panels have not hesitated in disqualifying all the results of an athlete who has been shown to have administered prohibited substances or used prohibited methods for a number of years (e.g. CAS 2014/A/3561 & 3614 and CAS 2016/O/4464). Conversely, the CAS panels have frequently applied the fairness exception and let results remain partly in force, when the potential disqualification period extends over many years and there is no evidence that the athlete had committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period (see e.g. CAS 2016/O/4481, CAS 2017/O/4980, CAS 2017/O/5039 and CAS 2017/A/5045). The CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case.
158. The Sole Arbitrator repeats that the IAAF has requested the disqualification of results extending to no less than eight years, which is considerably longer than the maximum period of ineligibility of four years that may be imposed under the IAAF Rules.
159. While the disqualification of results for a period of eight years would as such comply with the language of the IAAF Rules, the circumstances of the case as well as the principle of fairness do not support that. The Sole Arbitrator does not consider it fair to disqualify any and all results of the Athlete between 20 August 2008 and 9 June 2016 on the following grounds.
160. The Athlete has committed ADRVs in at least 2008 and 2012, when she administered very potent prohibited substances i.e. exogenous anabolic steroids. The consistent use in 2008 and 2012 suggests that the Athlete might have used the same or other substances also in between these two incidents, but there is no evidence of such administration. It is obvious that the Athlete has been tested numerous times in the period between 2009 and 2011, but the IAAF has not presented that the samples had produced positive results. Having said that, the Sole Arbitrator is also fully aware that negative samples do not always signify that an athlete has not administered prohibited substances – as this particular case shows.

161. The Sole Arbitrator further notes that the Athlete's name obviously does not appear on the 2013 Moscow Washout Schedule, although many Russian track and field athletes active at that time are on the list. On the contrary, the IAAF has specifically confirmed that it does not even allege that the Athlete had committed an ADRV in 2013. Neither is there evidence, or even an argument, on the Athlete's wrongdoings in 2014, 2015, or 2016.
162. The Sole Arbitrator goes on to note that even though (1) the anti-doping organisations are entitled to retest samples at any time within the applicable statutes of limitations, (2) the Athlete has administered substances that could not be traced easily in 2008 and 2012, and (3) she has not contributed to the uncovering of her ADRVs, she has not been able to influence the timing of the retest or the investigative measures either.
163. The Sole Arbitrator has previously concluded that the Athlete has committed two ADRVs by using three anabolic steroids. As noted by the IOC Disciplinary Commission, the nature of the substances found in the Athlete's 20 August 2008 sample is consistent with intentional use of prohibited substances specifically ingested to deliberately improve performance. Considering the main effects of exogenous anabolic steroids – increase of strength and muscle mass growth – it is obvious that the Athlete has gained advantage even after August 2008 and July 2012, when she had administered DHCMT, boldenone, and 1-testosterone. Therefore, the Sole Arbitrator finds that it would not be fair on the other athletes who have competed against the Athlete if her results immediately after August 2008 and July 2012 remained untouched. On the other hand, the Sole Arbitrator observes that the IAAF has not addressed the length of the period during which the prohibited substances administered in July 2012 have enhanced the Athlete's sporting performance.
164. In the circumstances of the case, it is not appropriate to maintain all results between the two ADRVs and the commencement of the provisional suspension on the basis of fairness; the Athlete had repeatedly endeavoured to enhance her sporting performance with various prohibited substances thereby gaining unjustified advantage over her rivals. However, taking into consideration that there is no evidence or even an argument that the Athlete had committed an ADRV in 2013 or after that even though the IAAF has put forth that many Russian track and field athletes administered prohibited substances prior to the 2013 IAAF Moscow World Championships, the Sole Arbitrator finds it appropriate to disqualify the Athlete's results until 31 December 2012. Together, the disqualification and the ineligibility period exceed eight years, which is a severe sanction for a severe offence.

## ON THESE GROUNDS

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

1. The Request for Arbitration filed by the International Association of Athletics Federations (IAAF) on 6 April 2018 is partially upheld.
2. A period of ineligibility of four (4) years is imposed on Ms Tatyana Firova, starting from 9 June 2016.
3. All competitive results of Ms Tatyana Firova from 20 August 2008 through to 31 December 2012 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.