Arbitration CAS 2018/O/5712 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) & Ekaterina Galitskaia, award of 1 February 2019

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

Athletics (hurdle race)
Doping (use or attempted use of prohibited substances)
Principle of tempus regit actum for procedural matters
Standard of proof
Means of proof
Purpose and reliability of a washout schedule
Aggravating circumstances
Proportionality of the sanction
Fairness exemption with regard to disqualification of results

1. **Pursuant to the legal principle of *tempus regit actum*, procedural matters are governed by the regulations in force at the time when the proceedings were initiated.**

2. **The *"comfortable satisfaction"* standard of proof has been the normal CAS standard in many anti-doping cases even prior to the WADA Code. The test of comfortable satisfaction must take into account the circumstances of the case, which include the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport compared to national formal interrogation authorities. The gravity of the particular alleged wrongdoing is relevant to the application of the standard in any given case. However, the standard of proof is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven.**

3. **An anti-doping rule violation (ADRV) can be proven by *"any reliable means"* including, but not limited to evidence of third persons, witness testimony, expert reports and documentary. In addition, an ADRV may be established by reference to *"other analytical information"*.**

4. **The purpose of a washout schedule is to monitor athletes using prohibited substances to keep track of the athletes who were tested. On this background, an athlete's presence on a washout schedule is a strong indication that the athlete used a prohibited substance. However, in order to come to the conclusion that an athlete committed an ADRV, the mere fact that the athlete appears on a washout schedule must be supported by other, different and external elements pointing in the same direction. Whether there is sufficient evidence to establish that an athlete committed an ADRV must be**

considered individually.

5. **The fact that the name of an athlete is present on washout schedules and that s/he used multiple prohibited substances on more than one occasion are aggravating circumstances justifying a period of ineligibility greater than the standard period of two years for a first violation.**

6. **The WADA Code has been drafted to reflect the principle of proportionality, thereby relieving the need for the adjudicating body to apply this principle. In other words, the principle of proportionality is "built into" the WADA Code and the rules of the international federation implementing it. It follows, therefore, that the adjudicating body cannot consider the application of the principle of proportionality.**

7. **It is not appropriate to maintain results on the basis of fairness where the doping is severe, repeated and sophisticated. However, there is an overriding requirement of fairness in interpreting and assessing sanctions under the IAAF Rules. Therefore, even if there is no mention of a fairness exemption in the substantive rules applicable to a specific case, this principle applies in order to avoid disproportional disqualification of results.**

I. PARTIES

1. The International Association of Athletics Federations (the "Claimant" or the "IAAF") is the world governing body for the sport of Athletics, established for an indefinite period with legal status as an association under the laws of Monaco. The IAAF has its registered seat in Monaco.

2. The Russian Athletic Federation (the "First Respondent" or the "RUSAF") is the national governing body for the sport of Athletics in the Russian Federation, with its registered seat in Moscow, Russian Federation. The RUSAF is a member federation of the IAAF for Russia, currently suspended from membership.

3. Ms Ekaterina Galitskaia (the "Second Respondent" or the "Athlete") is a 31 years-old Russian athlete specializing in hurdle race. She is an International-Level Athlete for the purposes of the IAAF Competition Rules (the "IAAF Rules").

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts 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.

5. Pursuant to a letter from the Athletics Integrity Unit ("AIU") of the IAAF dated 24 November 2017, the AIU asserted that the Athlete had committed anti-doping rule violations in the period from 2012 to 2013.

6. The anti-doping rule violations (the "ADRVs") are asserted in connection with the two reports issued by Professor Richard McLaren on 16 July 2016 (the "First McLaren Report") and 9 December 2016 (the "Second McLaren Report" and, together with the First McLaren Report the "McLaren Reports") as part of his mandate to investigate, as an Independent Person ("IP") mandated by the World Anti-Doping Agency ("WADA"), allegations of systematic doping practices in Russian sport.

7. The Athlete was given a deadline until 8 December 2017 to promptly admit the violation and/or admit the violation and accept the consequences sought by the AIU or to provide her explanation for the asserted ADRVs.

8. On 8 December 2018, the Athlete provided her explanations for the asserted ADRVs to the AIU.

9. On 31 January 2018, the AIU informed the Athlete that it maintained its assertion that she had committed ADRVs and that her case would be referred to the Court of Arbitration for Sport (the "CAS"). The Athlete was granted a deadline until 14 February 2018 to choose whether to proceed under Rule 38.3 (first instance CAS hearing before a Sole Arbitrator with the right to appeal to the CAS) or 38.19 (sole instance before a three-member CAS Panel with no right of appeal, save to the Swiss Federal Tribunal) of the 2016-2017 IAAF Rules.

10. On 5 February 2018, the Athlete indicated that she would prefer her case to be heard as a single hearing under Rule 38.19 of the IAAF Rules. However, upon consultation, WADA did not give its consent to the Athlete's request, which is a necessary prerequisite for a single hearing under Rule 38.19 of the IAAF Rules.

11. As a result, the AIU informed the Athlete that her case would be referred to CAS under Rule 38.3 of the IAAF Rules.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 26 April 2018, the IAAF lodged a Request for Arbitration with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (the "Code") against the RUSAF and the Athlete (collectively the "Respondents"). The IAAF requested that, pursuant to Rule 38.3 of the IAAF Rules, the procedure be governed by the CAS appeal arbitration rules, informed CAS that its Request for Arbitration was to be considered as its Statement of

Appeal and Appeal Brief and requested the matter to be submitted to a sole arbitrator, acting as a first instance body.

13. On 4 May 2018, the CAS Court Office initiated the present arbitration and specified that, as requested by the Claimant, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the CAS Appeals Arbitration Division rules, Articles R47 *et seq.* of the Code. The Respondents were further invited to submit their Answer within 30 days.

14. On 24 May 2018, the Second Respondent requested an extension of the time limit for the filing of her Answer until 16 July 2018.

15. On 29 May 2018, the First Respondent requested an extension of the time limit for filing its Answer until 16 July 2018.

16. As the IAAF did not oppose the Respondents' requests, the CAS Court Office granted an extension of the time limit for the filing of Answers until 16 July 2018.

17. On 19 June 2018 and in accordance with Article R54 of the Code, the CAS Court Office informed the Parties that the Arbitral Panel appointed to decide the present matter was constituted by:
    - Prof. Jens **Evald**, Professor of Law in Aarhus, Denmark, as Sole Arbitrator.

18. In her letters of 26 June and 10 July 2018, the Second Respondent challenged the appointment of Prof. Jens Evald as a Sole Arbitrator pursuant to Article R34 of the Code and requested that Prof. Evald be replaced pursuant to Article R36 of the Code. In her challenged, the Athlete asserted that the Sole Arbitrator had already taken a decision on the same factual and legal issues in a previous case, CAS 2017/O/5039, and therefore *"It is impossible to see how Prof. Evald could decide without bias and, as the case may be, reach a different decision* [in the present] *case with regard to the very same allegations raised by the very same counterparty, the IAAF* […]*"*. In its letter of 4 July 2018, the First Respondent supported the challenge and request of replacement of Prof. Evald.

19. On 4 July 2018, the Sole Arbitrator maintained, that he was impartial, and independent of each of the Parties, and intended to remain so.

20. On 5 July 2018, the IAAF hold that the challenge was without merits and must be dismissed.

21. On 11 July 2018, the CAS Court Office advised the Parties that in light of the challenge, an Order on application for challenge should be rendered by the Board of the International Council of Arbitration for Sport (the "ICAS Board") pursuant to Article R34 of the Code. Separately, the CAS Court Office confirmed that the First Respondent's support of the challenge did not constitute a new and separate petition for challenge.

22. On 16 July 2018, the First Respondent informed the CAS Court Office that it would not file an Answer, but reserved the right to comment on any further pleadings or correspondence submitted by the IAAF and/or the Second Respondent in further course of these proceedings.

23. On 16 July 2018, the Second Respondent filed her Answer in accordance with Article R55 of the Code.

24. In its letter dated 18 July 2018, the Parties were invited to inform the CAS Court Office by 25 July 2018 whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submission.

25. In their letters, dated 23 July and 24 July, the Respondents requested that a hearing be held in the present matter.

26. On 26 July 2018, the IAAF considered that a hearing would be necessary in this matter. In the same email, the IAAF reserved its position as to whether it would be necessary to file further submissions, adduce further evidence or call for further witnesses or experts.

27. On 6 August 2018, the IAAF requested no less than twenty (20) days to file further submissions.

28. On 15 August 2018, the Second Respondent asserted that the IAAF's request for a second round of submissions was unfounded and must be dismissed.

29. On 10 October 2018, the ICAS Board issued its Decision on Challenge of Prof. Evald. In its Decision the ICAS Board ruled:

"1. The petition for challenge of the nomination of Prof. Jens Evald filed on 26 June 2018 by Ms. Ekaterina Galitskaia is dismissed.

[…]".

30. On 17 October 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this case. Further, the Parties were informed, that the Sole Arbitrator considered it justifiable, under Articles R56, R57 and R44.3(2) of the CAS Code, to order a second round of written submissions. The IAAF was invited to submit a Reply within 10 days and the Respondents would be invited to submit their Second Response within 10 days from receipt of the Reply.

31. On 23 October 2018 and after due consultation with the Parties, on behalf of the Sole Arbitrator, the CAS Court Office called the Parties and their experts and witnesses to appear at the hearing, which was to be hold on 7 December 2018 at 9:30 am (CET) at the CAS Headquarter in Lausanne, Switzerland.

32. On 29 October 2018, the IAAF requested an extension until 31 October 2018 of its deadline to file a Reply.

33. In its letter of 30 October 2018, on behalf of the Sole Arbitrator, the CAS Court Office granted the requested extension and thus invited the Respondents to submit their Second Response on or before 13 November 2018.

34. On 31 October 2018, the IAAF filed its Reply.

35. On 9 November 2018, the Second Respondent requested an extension of the deadline until 20 November 2018, a request the IAAF already had agreed to.

36. On 12 October 2018, the CAS Court Office granted the extension of time limit for the Second Respondent to file her Second Response until 20 November 2018.

37. On 12 November 2018, the First Respondent informed the CAS Court Office that it would neither file a Second Response nor attend the hearing.

38. On 20 November 2018, the Second Respondent filed her Second Response.

39. On 26 November 2018, an Order of Procedure was issued. It was signed by the IAAF on 26 November 2018, by the Second Respondent on 28 November 2018, and by the First Respondent on 30 November 2018.

40. On 5 December 2018 and further to a request from the Claimant accepted by the Second Respondent, the Sole Arbitrator confirmed with the Parties that he would accept the testimony of Dr. Rodchenkov by Skype and behind a screen.

41. On 7 December 2018, a hearing was held in Lausanne, Switzerland. In addition to the Sole Arbitrator and Ms. Pauline Pellaux, Counsel to the CAS, the following persons attended the hearing:

For the IAAF:

- Mr. Ross Wenzel, Counsel;
- Mr. Nicolas Zbinden, Counsel;
- Mr. Huw Roberts, Counsel;
- Prof. Christophe Champod, Expert;
- Mr. Andrew Sheldon, Expert via Skype;
- Dr. Grigory Rodchenkov, Witness via Skype and in the presence of Ms Tatiana Hay, and of his Counsel, Ms Avni Patel.

For the First Respondent:

- No appearance.

For the Second Respondent:

- Ms. Ekaterina Galitskaia, Athlete;
- Mr. Andrey Dolgov, Interpreter;
- Mr. Stefan Leimgruber, Counsel;
- Mr. Sebastiano Nessi, Counsel;
- Ms. Elza Reymond, Counsel;
- Mr. Andrey Kondakov, Counsel;
- Ms. Irene Wilson, Expert via Skype;
- Mr. Manuel Rundt, Expert via Skype.

42. The interpreter and the witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law.

43. At the opening of the hearing, both Parties confirmed that they had no objections to the admissibility of the appeal or disagreed with the procedure. As for the appointment of the Sole Arbitrator, the Athlete maintained her right to challenge the award for lack of independence and impartiality of the Sole Arbitrator.

44. At the conclusion of the hearing, the Parties confirmed that they were given ample opportunity to submit their arguments, answer the questions posed by the Sole Arbitrator and that they had no objections to the overall conduction of the proceedings, in respect of the Parties' right to be heard and to be treated equally in these arbitration proceedings.

IV. SUBMISSIONS BY THE PARTIES

A. The IAAF's Submissions

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

1. Key Findings of the McLaren Reports

46. The ADRV asserted against the Athlete are based on the McLaren reports and related evidence. The key findings of the McLaren Report is summarized as follows:

47. First, the First McLaren Report found that *"the Ministry of Sport directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the FSB, CSP and both the Moscow and Sochi laboratories"*. The Second McLaren Report confirmed the key findings of the First McLaren Report.

48. Second, the McLaren Reports uncovered and described three counter-detection methodologies known as i) the Disappearing Positives Methodology ("DPM"), ii) the Sample Swapping Methodology and iii) Washout Testing.

49. The Disappearing Positive Methodology. Where the initial screen of sample revealed an Adverse Analytical Finding ("AAF"), the athlete would be identified and the Russian Ministry of Sport would (through a Liaison Person) decide either to "SAVE" or "QUARANTINE". If the Athlete was "SAVED", the Moscow Laboratory would report the sample as negative in ADAMS. If the athlete was "QUARANTINED", the analytical bench work on the sample would continue and the AFF would be reported in the ordinary manner.

50. The Sample Swapping Methodology involved the replacing of "dirty" urine with "clean" urine. This necessitated the removing and replacing of the cap on sealed B sample bottles through a technique developed and implemented by an FSB team known as the "magicians". The Sample Swapping Methodology was trialled with respect to limited number of athletes at the 2013 University Games in Kazan and at the IAAF World Championships in Moscow in 2013. The Sample Swapping Methodology was facilitated by the establishment and maintenance of a "Clean Urine Bank" at the Moscow Laboratory, the Clean Urine bank was comprised of unofficial urine samples provided by certain athletes that were analysed and recorded in schedules in the Moscow laboratory ("Clean Urine Bank Schedules").

51. Washout Testing and the London Washout Schedules. The Washout Testing was devised in 2012, when Dr. Rodchenkov developed a secret cocktail called the "Duchess" (comprised of oxandrolone, metenolone and trenbolone) with a short detection period. The Washout Testing was deployed in 2012 in order to determine whether the athletes on the doping program were likely to test positive at the 2012 London Olympic Games. At that time, the relevant athletes were providing samples in official doping control Bereg kits. Even when the samples screened positive, they were automatically (i.e. without the need of a specific SAVE order) reported as negative in ADAMS. The Moscow Laboratory developed schedules to keep track of those athletes who were subject to the Washout Testing, using official Bereg Kits, in advance of the London Olympic Games (the "London Washout Schedules").

52. The Washout Testing and the Moscow Washout Schedules. The combination of Washout Testing and DPM, using official Bereg kits, only worked where the sample remained under the control of the Moscow Laboratory and was ultimately destroyed. The Moscow Laboratory, however, realised that the, as the Bereg kits were numbered and could be audited, seized or tested, it would only be a matter of time before it was discovered that the content of the samples would not match the entries in ADAMS. Therefore it was decided the that the Washout Testing would no longer be performed with official Bereg kits, but non-official containers such as Coke or baby bottles. This "under the table" Washout Testing consisted of collecting samples in regular intervals and subsequently testing those samples for quantities of prohibited substances to determine the rate at which those quantities were declining so that there was certainty that the athlete would test "clean" in competition. The Moscow Laboratory

developed schedules to keep track of those athletes who were subject to this unofficial Washout Testing scheme (the "Moscow Washout Schedules").

53. Within the context of the Second McLaren Report, the Independent Person (the "IP") identified a significant number of Russian athletes (including track and field athletes) who were involved in, or benefitted from, the doping schemes and practices he uncovered and exposed (the "Identified Athletes").

54. The IP made publicly available on the IP Evidence Disclosure Package ("EDP") website (https://www.ipevidencedisclosurepackage.net/), the evidence of the involvement of the Identified Athletes.

55. The evidence from the EDP was retrieved from the hard-drive of Dr. Rodchenkov, which he made available to the IP. The metadata of all documents was examined and determined to have been made contemporaneously to the events. The IAAF relies on an expert report prepared by Mr. Andrew Sheldon MSc., principal forensic consultant at Evidence Talks (the "ETL Report" dated 31 October 2018). Based, *inter alia,* on the ETL Report, the IAAF asserts the following:

- First, the most relevant EDP documents are produced in their native format (i.e. excel, eml, etc) and without any redaction or other modification. With respect to the London and Moscow Washout Schedules in particular, it is clear from the internal metadata of the documents that they were created and worked upon at the relevant time in 2012 and 2013.

- Second, the ETL Report concludes that *"all the messages are authentic and have been sent and received between Gmail, Yandex, minstm.gov.ru and Rusada accounts"* and there are no signs of changes to the Internet Transport headers *and "that all the mails were created between 19th July 2012 and the 30th April 2015 and that four of these emails contain attachments".*

- Third, certain of the EDP documents (including London Washout Schedules and one of the Clean Urine Schedules) are attached to contemporaneous emails that were sent at the relevant time to Liaisons Velikodniy and Zhelanova. For example, the London Washout Schedules at EDP0019 & EDP0020 were – on 19 July and 20 July 2012 respectively – copied by Tim Sobolevsky, modified (removal of column setting out the internal laboratory code) and then sent by email within minutes of making the modification to Ms. Zhelanova.

- Fourth, the witness statement from Dr. Rodchenkov confirms the various anti-detection methodologies including the Disappearing Positive Methodology and washout testing. He also attests to the authenticity of the London and Moscow Washout Schedules as well as of the Clean Urine Bank Schedules.

56. All documents contained on the EDP website were anonymized, not least in order to protect the integrity of the on-going investigations. However, each Identified Athlete was attributed one or more codes which were substituted for their names or the relevant documents.

57. The Athlete in the present case is one of the Identified Athletes and her codes for the purposes of the EDP website are A0227.

58. For the sake of these proceedings, the IAAF has produced the original non-anonymized documents.

59. As to the Athlete's claims that the IAAF's case is asserted *"solely on the basis of the report issued by Mr. McLaren on 16 July and 9 December 2016"* and that the IAAF *"simply accepted at face value, the (purely) subjective conclusions of Mr. McLaren"*, the IAAF maintains the following:

- Firstly, it is wrong to describe the conclusions of Professor McLaren as *"purely subjective"*. Those findings are backed up by documentary, forensic and analytical evidence. The web of cross-corroboration is such that the existence of the doping and anti-detection schemes laid bare by the McLaren Reports and evidence cannot be seriously contested. Indeed, a whole series of tribunals (including the CAS on more than one occasion) and commissions, *inter alia* the Schmid Commission, have endorsed the McLaren findings;

- Second, it is wrong to say that the IAAF relies purely on Professor McLaren's findings. The IAAF relies primarily on the EDP evidence that was the basis of the McLaren Reports.

2. The Evidence Against the Athlete

a) London Washout Schedules

60. Two of the Athlete's (official) doping control samples feature on the London Washout Schedules: (i) sample 2729325 collected on 15 July 2012 and (ii) sample 2729747 collected on 21 July 2012.

61. The following information is recorded on the London Washout Schedules in respect of the 15 July 2012 sample (see EDP0019):

- Desoxymethyltestosterone (DMT 100,000).

62. The following information is recorded on the London Washout Schedules in respect of the 21 July 2012 (see EDP 0021):

- Desoxymethyltestosterone traces.

63. Both samples were reported as negative in ADAMS.

b) Moscow Washout Schedules

64. Four (unofficial) samples on the Moscow Washout Schedules are listed as belonging to the Athlete; they date from 28 June and 6, 14 and 26 July 2013 respectively (see EDP0034).

65. The following information is recorded on the Moscow Washout Schedules in respect of the 28 June 2013 sample:

- Methasterone (a lot);
- Trenbolone (a lot);
- Boldenone (5 ng/ml);
- 1-testosterone (3 ng/ml);
- Oxabolone; and
- Norandrosterone (4 ng/ml).

66. The following information is recorded on the Moscow Washout Schedules in respect of the 6 July 2013 sample:

- Methasterone metabolite (900.000 a lot).

67. The following information is recorded on the Moscow Washout Schedules in respect of the 14 July 2013 sample:

- Methasterone metabolite (170 000 a lot);
- T/E 0.8.

68. The following information is recorded on the Moscow Washout Schedules in respect of the 26 July 2013 sample:

- Methasterone metabolite 70 000;
- 4-OH-Testosterone 25 ng/ml; and
- T/E 0.1.

3. Establishing the Anti-Doping Rule Violation

69. Rule 32.2(b) of the 2012-2013 IAAF Competition Rules forbids the *"Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"*.

70. As with other ADRVs, *"Use"* within the meaning of Rule 32.2 (b) may be established by any reliable means, including but not limited to admissions, evidence of third parties, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information (Rule 33.3 of the 2012-2013 IAAF Competition Rules).

71. The evidence indicates that:

- The Athlete was one of the protected athletes who featured on the London Washout Schedules and whose positive samples in the lead-up to the London Olympic Games were automatically reported as negative in ADAMS (i.e. without the need for a specific SAVE email).

- Two of the Athlete's London Washout samples tested positive for the same prohibited substance i.e. desoxymethyltestosterone.

- The Athlete also features on the Moscow Washout Schedules, which comprised athletes who were known to be following a doping programme.

- Once again, the samples indicate the presence of anabolic steroids, viz. methasterone, trenbolone, boldenone, 1-testosterone, oxabolone and norandrosterone.

- As set out in the First IP Report, Dr. Rodchenkov developed a steroid cocktail optimized to avoid detection. After the London Olympic Games, this cocktail was composed of trenbolone, oxandrolone and methasterone. Two components of the Rodchenkov cocktail were found in the Athlete's samples on the Moscow Washout Schedules.

72. There is, therefore, ample evidence that the Athlete used a variety of prohibited anabolic steroids. She has therefore breached Rule 32.2(b) of the IAAF Rules.

4. Period of ineligibility

73. Pursuant to Rule 40.2 of the 2012-2013 IAAF Competition Rules, the period of ineligibility for a Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of eligibility (Rules 40.4 and 40.5 of the 2012-2013 IAAF Competition Rules) or for increasing it (Rule 40.6 of the 2012-2013 IAAF Competition Rules) are met.

74. Pursuant to Rule 40.6 of the 2012-2013 IAAF Competition Rules the ineligibility otherwise applicable shall be increased up to 4 years due to aggravating circumstances as, i.e. the Athlete committed the ADRV as part of a doping plan or scheme, used multiple Prohibited Substances on multiple occasions.

75. A number of aggravating circumstances are relevant in the present case:

- The Athlete used a variety of anabolic steroids on multiple occasions in the lead-up to the 2012 London Olympic Games and the 2013 Moscow World Championships, thereby committing multiple ADRVs.

- The Athlete was part of a centrally dictated doping scheme. Without limitations, she provided unofficial samples for washout testing and those of her official samples that did test positive for prohibited substances were "SAVED" i.e. falsely reported as being clean.

- The unofficial washout testing was carried out in the run up to the most important event organised by the IAAF, i.e. the World Championship in Russia. Its aim was to ensure that the athletes sent to the competition would not test positive. It is no coincidence that all of the athletes on the Moscow Washout Schedule have at least one dirty sample; these athletes were unofficially tested precisely because they were known to be using prohibited substances.

76. In view of multiplicity of the aggravating circumstances, the only appropriate period of ineligibility would be the maximum four years.

77. Pursuant to Rule 40.10 of the 2012-2013 IAAF Competition Rules, the period of ineligibility shall start on the date of the CAS award.

5. Disqualification

78. The first evidence of doping dates back to the first sample in the London Washout Schedules from 15 July 2012. Therefore, all the Athlete's results from such date through to her provisional suspension or ineligibility must be disqualified.

6. Requests for Relief

79. The IAAF makes the following requests for relief, asking the CAS to rule as follows:

(i) CAS has jurisdiction to decide on the subject matter of 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(b) of the IAAF Rules.

(iv) A period 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 voluntary accepted, by the Athlete until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.

(v) All competitive results obtained by the Athlete from 15 July 2012 to the commencement of any period of provisional suspension or ineligibility 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 or, in the alternative, by the Respondents jointly and severally.

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

B. The Athlete's Submissions

80. The Athlete's submissions, in essence, may be summarized as follows:

1. Issues Related to the McLaren Report

81. The McLaren Reports, which are the result of a rushed and incomplete investigation and which is fraught with flaws, was never intended to serve, and cannot serve, as evidence of an individual ADRV.

82. The McLaren investigation was neither an objective nor a comprehensive investigation:

- Mr. McLaren did not have the required level of independence and impartiality due to his prior ties to WADA and the strong views he had already expressed on the matters he was supposed to investigate;
- WADA gave Mr. McLaren a one-sided mandate and not sufficient time to conduct a thorough investigation;
- There are legitimate doubts as to the independence of other members of the "McLaren team";
- The McLaren Report is largely based on allegations of a single individual who is not truthful and not credible:
- The McLaren investigation failed to make a number of verifications: i) Mr. McLaren never visited Russia and in particular the Moscow and Sochi laboratories as part of his investigations; ii) Mr. McLaren never interviewed, let alone approached the individuals mentioned in his report; and iii) Mr. McLaren did not investigate alternative theories to explain the information provided by Dr. Rodchenkov.

83. The Athlete relies on two expert reports, one prepared by Ms. Irene Wilson, a forensic technology expert at Swiss Forensic Technology Solutions (the "Swiss FTS Report" dated 11 July 2018) and another one prepared by Mr. Manuel Rundt, a forensic technology expert at IT Compliance System GmbH (the "ITCS Report" dated 9 November 2018), who have analyzed the "documentary evidence" relied upon by Mr. McLaren. The reports set out the principles applicable to the recovery and examination of electronic data in order for digital information to be admissible as evidence.

84. According to the expert reports three core forensic principles must be adhered to whilst recovering and examining data in order for digital information to be admissible in legal proceedings:

- First, the source of evidence must be identified and there needs to be strong supporting documentation to verify the authenticity of the source. Some of the commonly used evidence authentication methods are Chain of Custody forms or the presence of an independent witness during the data collection process;

- Additionally, the collection process needs to be thoroughly documented with information such as the name of the various individuals involved in the collection process, the precise time of events, the identification information, e.g. computer ID tags, serial numbers, server names, desk numbers and login credentials. The step-by-step details of the process should be documented in a document signed by all of the parties involved;

- Second, it is crucial that evidence is never altered because even the smallest change can cast a shadow of doubt on the entire item of evidence;

- For example, the evidence should always be kept in secure storage to prevent unauthorized tampering or alternation. A list of people with access to the data and records of any time the data is accessed should be maintained;

- Moreover, other arrangements such as the identification of the evidence via hash-values or the usage of data acquisition tools which do not alter the evidence (such as physical write-blockers) or the backup of the pristine data should be implemented;

- Finally, anyone should be able to reproduce the work and get the same results; therefore, it is vital that all actions performed on an item of evidence to produce a result are documented in detail. This is particular important if counter-expertise is requested.

85. All of these standards seem to have been ignored in the McLaren investigation.

86. The documents and the expert report filed by the IAAF do not permit any assessment regarding the authenticity or the date of creation of the EDP documents.

87. With regard to the "metadata" of the documents referred to by the IAAF, they must be divided into two categories: i) *external metadata*, which describes a file but is not stored directly within the file. It is usually stored in in the file's container and lists information such as the date of creation, the date of last modification or the document's security settings; and ii) *internal metadata*, which is information stored within the file itself and is therefore part of its content.

88. According to the Swiss FTS Report, *the external metadata* can easily be edited or removed unwillingly or intentionally with only a very rudimentary knowledge of IT or an ability to use a search engine online and follow a few simple steps. Therefore, and because of its volatility

and ease of manipulation, external metadata alone is not sufficient to confirm the origin of a file without the support of thorough documentation.

89. According to the ITCS Report, *the internal metadata* timestamps of office documents can be forged very easily without leaving any forensic traces. Forging these timestamps can be as easy as setting back the computer's system clock to the date and time that you want the document to appear to be created and modified on. Therefore, to make an assessment about the authenticity and creation fates of any exported evidence item it needs to be traced back to the original evidence by strong and detailed documentation and by a complete and gapless chain of custody. This is the most important forensic principle. None of this has been provided or even proven by the IAAF, and the McLaren Report itself gives no information as to compliance with any of these basic forensic principles.

90. Based, *inter alia*, on the two expert reports, the Athlete asserts that the origin and authenticity of the "documentary evidence" relied upon by Mr. McLaren is not clear and cannot be verified as: i) all of the "documentary evidence" relied upon by Mr. McLaren allegedly originates from a single source, Dr. Rodchenkov's hard drives; ii) an image of the drives was created by the U.S. authorities, iii) the image was then given to Mr. McLaren and the investigation team by U.S. authorities, iv) the investigation team, or other unknown individuals, translated, redacted, modified, printed and scanned the documents; v) a publicly accessible database was created by unknown individuals working for a private company located in the UK; vi) the documents were sent to his private company; and vii) the documents finally uploaded on the database, thus creating the EDP.

91. The EDP contains a number of errors and mistakes. Many central findings in the McLaren report have proven wrong since the issuance of the Report.

92. Mr. McLaren has had access to unnamed witness "testimonies", which is used to support his allegations. Such unfairness and inequality of arms based on unchallenged anonymous evidence and the effect which it produces on the outcome of the findings violates Article 6 of the European Convention on Human Rights ("ECHR").

93. The McLaren investigation was conducted in violation of WADA's own investigation standards as set out in the International Standard for Testing and Investigations (ISTI), paras 12.3.3 and 12.3.4.

94. The McLaren Report cannot be relied on to sanction individual athletes – as confirmed by several independent CAS panels, for instance CAS 2017/A/5379. Furthermore, different sports federations, i.e. FIFA and the World Curling Federation (the "WCF"), have concluded that the "evidence" adduced by McLaren and Dr. Rodchenkov was insufficient to prove any wrongdoing by individual Russian athletes. The McLaren Report merely sets out the subjective views of Mr. McLaren and cannot serve as evidence of individual anti-doping rule violations committed by the Athlete.

2. Issues Related to Dr. Grigori Rodchenkov's Witness Statement

95. The witness statement of Dr. Rodchenkov does not constitute evidence (let alone direct and particular cogent evidence) of any ADRV committed by the Athlete. Further, Dr. Rodchenkov is not a truthful or credible witness:

- Significant parts of Dr. Rodchenkov's story are uncorroborated by any evidence and were found to be mere "hearsay" by two independent CAS panels;
- Sports federations like FIFA and the World Curling Federation ("WCF") have found that they could not initiate proceedings against any athletes incriminated by Dr. Rodchenkov.
- The fact that Dr. Rodchenkov is not a credible person was confirmed by the Independent Commission (the "IP") appointed by WADA in 2015;
- Dr. Rodchenkov's allegations were made under the threat of deportation from the United States and for his own gain.
- Dr. Roschenkov has changed his story repeatedly and whenever it has served him;
- Finally, Dr. Rodchenkov's credibility is undermined by the fact that he is an unstable person, with a long history of alcohol and substance abuse as well as mental instability resulting, *inter alia*, in various hospitalizations.
- Dr. Rodchenkov's allegations are (i) irrelevant to the Athlete's case and/or (ii) unsupported by any objective evidence, and (iii) false or inaccurate.

3. Issues Related to the Athlete

96. The Athlete did not commit any anti-doping rule violation and, in any event, the specific "evidence" against her is clearly insufficient.

a) London Washout Schedules

97. The IAAF has failed to provide any explanation or evidence as to: i) who created the London Washout Schedules, ii) when they were created, iii) for what exact purposes they have been created, and iv) why these two lists, which were purportedly drafted within no more than 6 days, look completely different and contain different categories of information.

98. The IAAF has not produced any witness evidence supporting the allegation that the Athlete was part of the alleged London Washout Testing Program.

99. The London Washout Schedules in respect of Sample No. 2729325:

- The Athlete does not dispute that the sample was collected from her on 15 July 2012. This is recorded in the ADAMS system;

- The IAAF has failed to offer any explanation with regard to: i) what happened to the Athlete's sample after it was taken, ii) where it was taken, iii) where it was analyzed, iv) by whom it was analyzed, v) whether there is a B-sample, and vi) why the sample has not been retested to verify the alleged presence of prohibited substances.

- The IAAF has failed to establish to the standard of comfortable satisfaction that the prohibited substances were present in Sample No. 2729325.

100. The London Washout Schedules in respect of Sample No. 2729747:

- First, the alleged "schedule" records Sample 272947 as having been collected from a male athlete, which is evidently wrong. The Athlete confirms that the sample was collected from her as indicated by the ADAMS records of the Sample.

- Second, nothing in the table links Sample No. 2729947 to a positive test result. The positive doping test results appear to be recorded randomly and are not arranged in any particular order that corresponds to a specific sample number.

- Thirdly, the purported connection between Sample No. 2729747 and the alleged positive doping test results only derives from numbering of different pages available on the EDP. It is only through this numbering, which must have been subsequently added by the McLaren investigation team, that Sample No. 2729747 is linked to a positive doping test result.

- In conclusion, the IAAF has failed to establish to the standard of comfortable satisfaction that any prohibited substance were present in the Athlete's Sample No. 2729747.

- Furthermore, the IAAF fails to mention that the Athlete also provided another Sample No. 2727653 on 29 July 2012, which did not show the presence of any prohibited substance.

b) The Moscow Washout Schedules

101. The IAAF has adduced no pertinent evidence that the Athlete was part of any "Washout Testing program" in the run-up to the Moscow World Championships.

102. The origin of the Moscow Washout Schedules is dubious. There is no explanation or evidence as to: i) who collected the alleged "unofficial samples", ii) where those samples were collected, iii) how it could be ascertained, back then and today, that a certain sample belonged to a certain athlete, iii) who conducted the analysis, iv) where the analysis was conducted, and v) whether an analysis was conducted at all.

103. The only link between the "unofficial samples" and the Athlete is that the Athlete's name was written next to them on a table, whose origin is dubious and cannot be verified.

104. The personal condition of the Athlete made no sense for her to be enrolled in any doping program during summer 2013: In December 2012, the Athlete underwent an arthroscopy of her left knee joint. In May 2013, the Athlete started to compete again. The Athlete was not able to qualify for the 2013 Moscow IAAF World Championships. These circumstances does not provide support for the IAAF's allegation that the Athlete was involved in a doping program.

105. There is no reliable evidence that the Athlete was involved in an alleged Washout Testing program in the run-up to Moscow World Championships in 2013.

106. There are no corroborating evidence of the alleged purpose of the Moscow Washout Schedules and the IAAF's allegation that the Athlete used prohibited substances.

4. Conclusions

107. The IAAF has failed to conduct its own investigation into the alleged ADRV. The IAAF's "investigation" clearly falls short of the level of investigation required to meet the standard of proof applicable under the 2012-2013 IAAF Competition Rules. The IAAF, rather than conducting an independent assessment of the facts of the case, simply accepted the subjective conclusions of Mr. McLaren.

108. The IAAF has failed to discharge its burden of proof and the "comfortable satisfaction" standard should take into account the gravity of the alleged wrongdoing. The IAAF has simply relied upon the investigation carried out by another institution, i.e. WADA, to prove its case and to sanction the Athlete, based on one "single document", namely the McLaren Report, and more specifically the Second McLaren Report. Further, an ADRV finding requires cogent evidence showing the Athlete personal and deliberate involvement in the commission of a specific and identifiable ADRV. The rules enshrine the fundamental principle of individual guilt and responsibility and even if established, the existence of an alleged wide doping scheme would be insufficient in itself to sanction the Athlete.

109. The IAAF has failed to establish any aggravating circumstances and the requested period of ineligibility is grossly disproportionate. The aggravating circumstances alleged by the IAAF contain the same elements as those asserted to show the Athlete's anti-doping rule violation. The IAAF has failed to discharge its burden of proving an ADRV. It follows, that the IAAF has failed to discharge its burden of proving the aggravation circumstances to the standard of comfortable satisfaction.

110. Even if it is found that the IAAF has established an ADRV by the Athlete as well as the aggravating circumstances, the period of ineligibility of four years is grossly disproportionate considering the circumstances of the case, i.e. that the Athlete has a clean doping record.

5. The Athlete's Requests for Relief

111. The Athlete makes the following requests for relief, asking the CAS to:

(a) declare that Ms Ekaterina Galitskaia is not guilty of any anti-doping rule violation under Rule 32.2(b) of the 2012 IAAF Competition Rules;

(b) dismiss the IAAF's request for a period of ineligibility of four years or any other period commencing on the date of the final CAS award;

(c) dismiss the IAAF's request for disqualification of all competitive results (including forfeiture of any titles, awards, medals, profits, prizes and appearance money) obtained by Ms Ekaterina Galitskaia from 15 July 2012 through to the commencement of any period of provisional suspension or ineligibility;

(d) order the IAAF to compensate Ms Ekaterina Galitskaia for all costs of the arbitral proceedings including Ms Ekaterina Galitskaia's attorney fees and expenses.

V. JURISDICTION, APPLICABILITY OF THE APPEAL ARBITRATION PROCEDURE AND ADMISSIBILITY

112. The IAAF maintains that the jurisdiction of CAS derives from Rule 38.3 of the 2016-2017 IAAF Competition Rules, effective from 1 November 2015 (the "2016-2017 IAAF Rules"). As a consequence of its suspension, the RUSAF was not in a position to conduct the hearing process in the Athlete's case by way of delegated authority from IAAF pursuant to Rule 38 of the IAAF Rules. In these circumstances, it is not necessary for the IAAF to impose any deadline on the RUSAF for that purpose. The Athlete expressly consented to the application of Rule 38.3 of the IAAF Rules.

113. Rule 38.3 of the 2016 IAAF Rules determines 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. A failure of 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".

114. The Sole Arbitrator notes that the Athlete is an International-Level Athlete and that the RUSAF is indeed prevented from conducting a hearing in the Athlete's case within the deadline set out by Rule 38.3 of the IAAF Rules. The Sole Arbitrator confirms that the IAAF was therefore permitted to refer the matter directly to a sole arbitrator appointed by CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules. The jurisdiction of CAS is therefore based on Rule 38.3 of the IAAF Rules and, although the present procedure is a first-instance procedure, which had thus been assigned to the Ordinary Arbitration Division, the rules of the appeal arbitration procedure shall apply. Finally, the Sole Arbitrator notes that the Respondents have not challenged the jurisdiction of the CAS. On the contrary, they both have confirmed the jurisdiction of the CAS by signing and returning the Order of Procedure to the CAS Court Office.

115. Since the request for arbitration, to be considered as a combined statement of appeal and appeal brief, complies with the formal requirement set by the Code and since there are no objections as to admissibility of the present case, the Sole Arbitrator finds that the Request for Arbitration is admissible.

VI. APPLICABLE LAW

116. 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".

117. The Parties agree that procedural aspects of this appeal shall be subject to 2016-2017 IAAF Rules and the substantive aspects of the Washout Allegations shall be governed by the 2012-2013 IAAF Rules. Monegasque law shall apply (on a subsidiary basis) to such issue.

118. The Sole Arbitrator observes that the Parties' assertions correspond to Rules 13.9.4, 13.9.5 and 21.3 of the IAAF Anti-Doping Rules (the "IAAF ADR") that entered into force on 6 March 2018 that the proceedings are primarily governed by the IAAF Rules and subsidiarily by Monegasque Law. The IAAF Rules 13.9.4 and 13.9.5 read 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).

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".

119. Rule 21.3 of the IAAF ADR further provided that ADRVs committed prior to 3 April 2017 are substantively subject to the rules in place at the time of the alleged anti-doping rule violation. In 2012 and 2013 these were the 2012-2013 IAAF Competition Rules.

120. Pursuant to the legal principle of *tempus regit actum*, the Sole Arbitrator is satisfied that procedural matters are governed by the regulations in force at the time of the procedural act in question. Consequently, whereas the substantive issues are governed by the 2012 edition of the IAAF Rules (the "2012-2013 IAAF Rules"), procedural matters are governed by the 2016-2017 IAAF Rules. As will be explained below, in spite of the introduction of the fairness exemption in the 2016-2017 IAAF Rules and of the automatic disqualification of results under the 2012-2013 IAAF Rules, the Athlete's case is in any event not prejudiced by the application of the 2012-2013 IAAF Rules instead of the 2016-2017 IAAF Rules, as the Sole Arbitrator deems that there is an overriding requirement of fairness in interpreting and assessing sanctions under the IAAF Rules.

VII. MERITS

121. The Sole Arbitrator notes that while he has carefully considered the entirety of the Parties' written submissions, expert reports, witness statements, and oral testimony at the hearing, he only relies below on that evidence which he deems necessary to decide this dispute.

A. Regulatory Framework

122. The Sole Arbitrator observes that the following regulatory framework is relevant to the merits of the case at hand.

1. Definition of ADRV

123. The relevant parts of Rule 32 of the 2012-2013 IAAF Competition Rules reads as follows:

> *"RULE 32 Anti-Doping Rule Violations*
>
> *1. Doping is defined as the occurrence of one or more of the anti-doping rule violations set out in Rule 32.2 of these Anti-Doping Rules.*
>
> *2. 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".

124. "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".

125. As shown by the above citations, the application of Rule 32.2(b) of the 2012-2013 IAAF Rules does not presume that an athlete used a prohibited substance knowingly and the anti-doping organisation does hence not need to establish *mens rea*.

2. Burden, standard and means of proof

126. Rule 33(1), (2) and (3) of the 2016-2017 IAAF Rules read as follows:

"RULE 33 Proof of Doping

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.

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, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytic information".

127. The corresponding rules of the 2012-2013 IAAF Rules are practically identical with the 2016-2017 IAAF Rules.

128. Pursuant to Rule 33 (1), the IAAF bears the burden of proof of establishing that the Athlete committed an ADRV.

129. The Sole Arbitrator notes that in order to establish an ADRV in accordance with Rule 33 (3) of the 2012-2013 IAAF Rules, the IAAF has to establish an ADRV to the comfortable satisfaction of the Sole Arbitrator.

130. The Sole Arbitrator observes that CAS jurisprudence provides important guidance on the meaning of the application of *"comfortable satisfaction"* standard of proof. This standard of proof is well-known in CAS practice, as it has been the normal CAS standard in many anti-doping cases even prior to the WADA-code, cf. CAS 2009/A/1912, at para. 54.

131. The Sole Arbitrator aligns with the analysis of CAS jurisprudence by the Panel in CAS 2017/A/5379, at paras. 704-707:

- The test of comfortable satisfaction *"must take into account the circumstances of the case",* cf. CAS 2013/A/3258, which include *"[t]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport compared to national formal interrogation authorities"*, cf. CAS 2009/A/1920 and CAS 2013/A/3258.

- The gravity of the particular alleged wrongdoing is relevant to the application of the standard in any given case, cf. CAS 2014/A/3526 in which the Panel stated that the comfortable satisfaction standard is *"a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be "comfortable satisfied".*

- However, the standard of proof is not a variable one. The standard remains constant, but inherent in within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven, cf. CAS 2014/A/3650 in which the Panel stated that, *"the standard of proof does not itself change depending on the seriousness of (pure disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support".*

132. The Sole Arbitrator observes that an ADRV can be proven by *"any reliable means"* including, but not limited to evidence of third persons, witness testimony, expert reports and documentary. In addition, an ADRV may be established by reference to *"other analytical information".*

B. The Athlete's Due Process Right

133. The Sole Arbitrator observes the Second Respondent's contentions that Mr. McLaren himself as well as the term of reference granted to him lack of independence and impartiality and that the McLaren Reports rely on anonymous witnesses and such unfairness and inequality of arms based on unchallenged anonymous evidence and the effect which it produces on the outcome of the findings violates Article 6 of the ECHR.

134. The Second Respondent, *inter alia*, contends that Mr. McLaren would not have the required level of independence and impartiality due to his prior ties with WADA and the views he had already expressed, that he was given a one sided-mandate and that the First McLaren Report is based on allegations and findings which were largely based on unnamed witness evidence, i) the various allegations about the Disappearing-Positive Methodology (First McLaren Report, page 27, 31 and 37), and ii) the Moscow Lab personnel complying with the doping cover-up scheme to not lose their jobs (First McLaren Report page 30).

135. After considering the Second Respondent's submission, the Sole Arbitrator is not persuaded that the Athlete's due process rights has been violated and deems that the above-mentioned allegations are in any event not relevant here. The Sole Arbitrator bases his conclusions on the facts that the IAAF in the present proceedings primarily relies in the EDP evidence comprised in the Second McLaren Report, and that the Second Respondent does not assert that i) the IAAF relies on anonymous witness evidence in the present proceedings and ii) the EDP evidence or the parts of the McLaren Reports that the IAAF relies on are based on anonymous witness evidence. Further, the Sole Arbitrator had no need to rely on the McLaren reports to a significant extent and, in general, their relevant part seems to coincide with the evidence provided in the present arbitration.

C. Did the Athlete Violate Rule 32.2(b) of the 2012-2013 IAAF Rules?

1. The scope of the Sole Arbitrator's examination

136. The Sole Arbitrator observes the IAAF's assertion that there is ample evidence that the Athlete used a variety of prohibited substances and therefore has breached Rule 32.2(b) of the 2012-2013 IAAF Rules. The IAAF relies primarily on the EDP evidence that was the basis of the McLaren Reports and to some extent supported by the Dr. Rodchenkov put in context by the McLaren Reports.

137. Further, the Sole Arbitrator observes the Second Respondent's contentions that i) the McLaren Reports, more specific the Second McLaren Report, was never intended, and cannot serve, as evidence of an individual ADRV, ii) the McLaren investigation was conducted in violation with the International Standard for Testing and Investigation (ISTI) iii) the authenticity of the EDP evidence cannot be verified, iv) Dr. Rodchenkov is not a truthful or credible witness, v) there is no reliable evidence that the Athlete was involved in the alleged London Washout Testing Program, and vi) there is no reliable evidence that the Athlete was involved in the alleged Moscow Washout Program.

138. The Sole Arbitrator notes that it is for the IAAF to prove that the Athlete committed an ADRV to the comfortable satisfaction of the Sole Arbitrator. Therefore, the Sole Arbitrator's scope of examination is limited to the evidence adduced by the IAAF. It follows that it is necessary for the Sole Arbitrator only to examine the EDP evidence and those parts of the McLaren Reports the IAAF relies on and not the McLaren Reports, more specific the Second McLaren Report, in full.

2. The Second McLaren Report as a basis for establishing an ADRV

139. The Sole Arbitrator observes that in its attempt to establish an ADRV of the Athlete under the Rule 32.2(b) of the 2012-2013 IAAF Rules, the IAAF relies on the conclusions drawn by Prof. McLaren in the Second McLaren Report. The IAAF primarily relies on the Washout Schedules indicating that the Athlete was unofficially tested before the London Olympic Game in 2012 and before the 2013 IAAF World Championships.

140. The Sole Arbitrator observes that it is undisputed by the Parties that the purpose of the McLaren Reports was not meant to serve as evidence against any individual athlete. However, the Parties disagree whether the findings of the McLaren investigation, e.g. the EDP evidence, presented in the Second McLaren Report can serve as evidence of an individual ADRV. The Sole Arbitrator holds that a distinction must be made between the purpose of the McLaren Reports and the findings of the McLaren investigations presented in the McLaren Reports. The Sole Arbitrator observes that the Second McLaren Report at pages 35/36 in respect of the findings states as follows:

"The IP is not a Result Management Authority under the World Anti-Doping Code and therefore does not have the authority to bring forward ADRV cases against individual athletes. Accordingly, the IP has not assessed the sufficiency of the evidence to prove an ADRV by any individual athlete. Rather, for each Russian individual, where relevant evidence of possible manipulation to conceal positive tests has been uncovered in the investigation, the IP has identified that evidence and will have provided it to WADA. See also Appendix A.

The different types of evidence provided with respect to any individual athlete are like strands in a cable. It will be up to each Result 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. Alternatively, the information may simply provide intelligence of that athlete as "benefit[ing] from alleged manipulations to conceal positive doping tests" and may inform possible future targeted testing in the federation".

141. Further, the Second McLaren Report (see page 36) states the following:

"A "use" case against an athlete may be established by "any reliable means" (Code Article 3.2). As relevant to the IP's investigation, reliable means includes:

i. Contextual evidence – which identifies how the athlete fits into the doping program which the IP investigation has established;

ii. Initial Testing Procedure ("ITP") screen of the Moscow Laboratory indicating possible substances (DPM);

iii. Forensic evidence related to sample tampering or substitution; and

iv. Dr. Rodchenkov's evidence linking a particular athlete to doping".

142. The Sole Arbitrator finds that the IP's statements support the contention that the findings in the Second McLaren Report, e.g. the EDP evidence, can serve as circumstantial evidence to establish an ADRV pursuant to Rule 32.2(b) of the 2012-2013 IAAF Rules. This finding is supported by a number of CAS Awards, e.g. CAS 2016/A/4745 at para. 40 *seq*. and more recently CAS 2017/A/5422 at paras.799-800 where the Panel accepted the Duchess List as circumstantial evidence, *"[…] when viewed in conjunction with other relevant probative evidence, the Panel considers that the Duchess List is capable of providing evidential support of the conclusion that the Athlete used a prohibited substance […]".*

143. The Sole Arbitrator is mindful of the statement by the Panel in CAS 2017A/5422, at para. 735, that the Panel did not consider that the mere fact of the Athlete's presence on the Duchess List was sufficient in itself for the Panel to be comfortable satisfied that the Athlete used a prohibited substance.

144. Further, the Sole Arbitrator observes that the Panel in CAS 2017/A/5422, at para. 732 stated that the *"probative value of the Duchess List is further diminished by the fact that some of the Sochi Appellants, for example members of the female ice hockey team, did not appear on the Duchess List, but were nonetheless alleged to have benefitted from the doping and sample-swapping scheme on an ad hoc basis. The fact that not all of the Sochi Appellants appear on the Duchess List demonstrates that, even on the IOC's case, the Duchess List is not suggested to be a fully comprehensive contemporaneous reflection of the athletes' alleged involvement in doping practices".*

145. The Sole Arbitrator observes, that the Second McLaren Report (see pages 71/72) states the following on "The Bereg Kit Washout Technique: London 2012": *"This process of pre competition testing to monitor if a dirty athlete would test "clean" at an upcoming competition is known as washout testing […] Weekly sample collections and testing of those samples were occurring to monitor whether athletes would likely test positive at the London Games".*

146. Further, the Sole Arbitrator observes that the Second McLaren Report (see pages 91/92) states the following on the "Washout Prior to Moscow Championships": *"The Moscow Laboratory was given the samples of the athletes on the washout program typically from Irina Rodionova, Alexey Velikodniy, or Athletics Head Coach, Alexi Melnikov. From those samples, the Moscow Laboratory developed a schedule to keep track of the athletes who were tested that included their corresponding results. This schedule was updated regularly when new washout samples arrived in the Laboratory for testing. This schedule was provided to the IP by Dr. Rodchenkov and contains the athletes' names and the substances they tested positive for in the weeks prior to the Moscow Championships (See from EDP0028 through to EDP0038)".*

147. The Sole Arbitrator notes that according to the IP and unlike the Duchess List the purpose with the Washout Schedules were to monitor athletes using prohibited substances to keep track of the athletes who were tested. According to the IP and unlike the Duchess List all athletes on the Washout Schedules used prohibited substances.

148. On this background, the Sole Arbitrator finds that an athlete's presence on a Washout Schedule is a strong indication that the athlete used a prohibited substance.

149. However, in order to come to the conclusion that the Athlete committed an ADRV, the Sole Arbitrator finds that the mere fact that an athlete appears on a Washout Schedule must be supported by other, different and external elements pointing in the same direction.

150. The Sole Arbitrator bears in mind that whether there is sufficient evidence to establish that the Athlete in the present case has violated Rule 32.2(b) of the IAAF Rules must be considered individually.

151. Further, the Sole Arbitrator observes the Second Respondent's assertion that the EDP evidence *"suffers from numerous errors and inconsistencies, which raise further doubts as to its accuracy"*, e.g. in the Duchess List (EDP0055), the athlete code 0858 is linked to a cross-country skier and in the schedule of samples and ADAMS reports prepared by the McLaren team (EDP1166), the same athlete code is linked to a canoeist. In another example a schedule of samples and ADAMS reports prepared by the McLaren team (EDP1166), sample no. 2889152 was wrongly assigned to a bobsleigh athlete with code A0920, whereas sample no. 2891932 was not provided by the bobsleigh athlete with code A0920 but another athlete. The Second Respondent holds that *"these are all examples which show that (at least a number of) the documents that form the EDP are flawed"*. Further, WADA wrote a letter dated 19 January 2017 to the international sports federations to *"inform* [them] *of some of the discrepancies or issues that have been identified since the publication of the Report and how the matters should be remedied or addressed, or will be remedied or addressed in the near future"*. WADA further stated in the same letter that, *"certain Athlete Code references* […] *have been misattributed by the IP Team"*.

152. The Sole Arbitrator observes that i) the numbers of reported errors in the EDP evidence are few (the Second Respondent mentions five examples), and ii) the reported errors have all been identified and remedied or addressed by WADA. On this background, the Sole Arbitrator holds that no inference can be drawn that the EDP evidence the IAAF relies on suffers from *"errors or inconsistencies"* or is *"flawed"*.

153. The Sole Arbitrator observes that Dr. Rodchenkov at the hearing testified that i) Dr. Tim Sobolevski had a copy of the Washout Schedules on his computer, but the EDP information derived from Dr. Rodchenkov's computer and ii) that they only had one incident were there were inconsistency between the two copies. On this background, the Sole Arbitrator holds that no inference can be drawn that i) there were (other) inconsistencies between the two copies, and ii) the EDP evidence that the IAAF relies on and which derives from Dr. Rodchenkov's computer is inconsistent with the copy on Dr. Sobolevski's computer.

154. The Sole Arbitrator observes the Second Respondent's assertions concerning Dr. Rodchenkov's character and lack of credibility. Further, the Sole Arbitrator observes that different CAS panels, e.g. CAS 2017/A/5422 at para. 733 stated that only little weight could be attached to some aspects of Dr. Rodchenkov's testimony as it was not corroborated by any other evidence. The same panel, at para. 788, found, however, Dr. Rodchenkov's testimony consistent and supportive to other evidence in the case. Therefore, the Sole Arbitrator holds that Dr. Rodchenkov's testimony when consistent with other evidence is relevant in this case.

155. The Sole Arbitrator observes the Second Respondent's assertions that the McLaren investigation was conducted in violation with WADA's own investigation standards as set out in the ISTI. The Sole Arbitrator finds this assertion to be of no relevance to the present case as i) it does not imply that the EDP evidence adduced by the IAAF cannot be relied upon, and ii) it is necessary for the Sole Arbitrator only to assess the evidentiary weight of the elements brought before him.

3. The Authenticity of the EDP Evidence

a. Expert evidence by Mr. Andrew Sheldon

156. The IAAF relies on expert scientific evidence from Mr. Andrew Sheldon, who testified as a part of a joint expert evidence session with the forensic experts instructed by the Second Respondent: Ms. Irene Wilson and Mr. Emanuel Rundt. During his testimony, Mr. Sheldon confirmed the accuracy of his expert report (the ITL Report dated 31 October 2018).

157. The evidence of Mr. Sheldon is summarized as follows:

- In his report, Mr. Sheldon focused on the internal metadata, as they are more reliable.
- The internal metadata may be changed with different tools, but using the tools that are known today, it would leave forensic traces or forensic artefacts.
- It is possible to set back the clock in the computer and thereby artificially create a new document. However, having reviewed all the data in the present case it is not realistic. All dates in the documents can be relied on.
- In respect of EDP0019 and the relationship with EDP1168 and EDP1170, all three documents have identical creation and last printed dates and times but slightly different modified times. It is possible to deduce that all three documents derive from the same document, believed to be the previous version of EDP0019, which was created on 19 July 2012 at 4:02:29 and modified at an unknown time.
- In respect of EDP0020 and EDP1173, both documents have identical creation and last printed dates and times but slightly different modified times. It is possible to deduce that EDP0020 was created on 20 July 2012 at 08:24:46 and last modified the same date at 08:34:04. Thirty four seconds later the file was edited and the file was saved as EDP1173. Two minutes later at 08:26:46 EDP was sent by email attached to EDP1172.
- There are no indications whatsoever that the documents had been manipulated.
- There are no indications at all that the emails had been forged or manipulated.

158. In cross-examination by the Second Respondent, Mr. Sheldon confirmed that i) he had only examined a copy of the original files, ii) he did not have access to the original files, iii) hash

value is a unique identity of the documents, iv) he was not present at the initial collecting data process, v) he did not know if there was any independent witness present at the initial collecting data process, vi) he did not see any document of the chain of custody of the data collecting process, vii) he had no record concerning the collection of the files, viii) he does not know the method with which the documents were extracted, ix) the external metadata can be changed, x) the internal metadata can be changed, but not easily, xi) he could not exclude that there were tools that can change the internal metadata without leaving traces, xii) it was possible to change the timestamp and set back the clock not leaving any trace, and xiii) the external and internal data did not tell anything about the veracity of the content of the documents, xiv) he could not say precisely who created the original documents, and xv) there was no evidence that the files were not manipulated.

b. Expert evidence by Ms. Irene Wilson and Mr. Manuel Rundt

159. The Athlete relies on expert scientific evidence from Ms. Irene Wilson and Mr. Manuel Rundt. Both experts testified orally via Skype. During their testimonies, Ms. Wilson and Mr. Rundt confirmed the accuracy of their written reports dated 11 July 2018 (the SWISS FTS Report) and 9 November 2018 (the ITCS Report).

160. In her report, Ms. Wilson explained the international standard practices for identifying, acquiring and handling electronic information in a forensic manner, so that it can be used in legal proceedings, and concluded that the ITL Report does not comply with these core principles. Further, Ms. Wilson concluded that Mr. Sheldon was not provided with enough information to conclude as he did in his report.

161. In cross-examination by the Claimant, Ms. Wilson confirmed that i) she had not analyzed the native files that Mr. Sheldon received, ii) she was not aware of any software program that allows changes of the internal metadata without leaving traces, iii) in her report she only described back setting the clock of the computer, iv) based on the technical information of Mr. Sheldon's report there is no indication of manipulation or forgery of the emails, and v) the documents attached to the emails indicate that they were created at the same time as the emails.

162. In the ITCS Report, Mr. Rundt concludes that the ITL Report does not meet the standards set out by the forensic best practices established within the IT forensic community. Additionally, the ITL Report contains mistakes. Almost all of the statements made in the ITL Report concerning the date of creation of the analyzed documents and emails about the "authenticity" of those documents and emails are based on wrong assumptions and are therefore false and misleading. Mr. Sheldon was not in a position to determine the authenticity of the majority of the files. Further, Mr. Rundt explained that it is possible to set back the computer clock without leaving traces.

163. In cross-examination by the Claimant, Mr. Rundt confirmed that i) he had not found any indications of documents being forged or manipulated in fact it is not possible to prove if any of the documents are true or forged, ii) assuming that the email is real, the document attached

to it reinforces the theory that the document was created at the same time, and iii) that in general there may be other contextual elements, outside the purely forensic analysis, that indicate that the documents are real and contemporaneously.

c. The findings of the Sole Arbitrator

164. The Sole Arbitrator observes that both Ms. Wilson and Mr. Rundt at the hearing confirmed that the international standard of best practice described in their reports is a guideline and not a mandatory set of rules.

165. Further, the Sole Arbitrator observes that Mr. Sheldon agreed that the international standard of best practice in general should be applied, but that forensics may be put in situations where it is not possible to analyze the authentic source, e.g. where a whistleblower has copied data from an unknown source. Ms. Wilson and Mr. Rundt conceded, but given the circumstances in the present case where the data allegedly derived from Dr. Rodchenkov's laptop they both found that it would have been possible to analyze the laptop to confirm whether the data was authentic or not.

166. After considering the Parties submissions and weighing the expert witness evidence, the Sole Arbitrator bases his conclusion on the following findings.

167. First, the Sole Arbitrator accepts that the internal metadata may be changed with different tools and thereby artificially create a new document. However, both Mr. Rundt and Ms. Wilson confirmed at the hearing that they were not aware of any software program that allows changes of the internal metadata without leaving traces. It is undisputed by the experts that it is possible to set back the computer clock without leaving traces. Both Ms. Wilson and Mr. Rundt confirmed that based on the ITL Report i) there are no indication of manipulation or forgery of the emails and ii) assuming the emails are real, they would thus indicate that the documents were created at the same time as the emails.

168. Second, the Athlete asserts that the fact that it is possible to set back the computer clock without leaving forensic traces suggests that the emails and documents are not authentic and contemporaneous. The Sole Arbitrator notes that this assertion is neither backed-up by any other evidence nor by any satisfactory explanation from the Second Respondent to substantiate her assertion. The Sole Arbitrator observes that the Second Respondent's assertion is based on the theory that all or part of the EDP evidence have been fabricated by Dr. Rodchenkov with the sole purpose to support his allegations against Russian athletes. The Sole Arbitrator notes that this theory does not explain how Dr. Rodchenkov could have or did fabricate thousands of emails, documents and the Washout Schedules. Therefore, the Sole Arbitrator holds the Second Respondent's assertion to be unfounded.

169. Third, the Sole Arbitrator observes that the expert witnesses agreed that the international standard for best practice should be applied if possible. The Sole Arbitrator accepts the explanation by Mr. Sheldon that it was not possible to examine Dr. Rodchenkov's laptop and therefore, it was not possible to analyze the authentic source.

170. On this background, the Sole Arbitrator concludes that the IAAF has established to the comfortable satisfaction of the Sole Arbitrator that the EDP evidence upon which the IAAF relies is authentic and contemporaneous.

171. The Sole Arbitrator will now proceed to examine whether it is the Athlete present on the London Washout Schedule and in the affirmative whether the Athlete used a prohibited substance.

4. The London Washout Schedule

a. Factual evidence by Dr. Grigori Rodchenkov

172. The IAAF relies on factual evidence from Dr. Rodchenkov. In his Witness Statement dated 23 August 2018, Dr. Rodchenkov stated that he served as the Director of the Moscow Laboratory from March 2005 until 9 November 2015.

173. Dr. Rodchenkov stated that he understands that his Witness Statement would be produced by the IAAF within the context of CAS proceedings in which the IAAF alleges that a number of Athletes, e.g. Ekaterina Galitskaia, committed an ADRV: *"As a preliminary matter, I am aware that all these athletes benefitted from the Program and were engaged in doping over the course of the years"*.

174. Dr. Rodchenkov described the methodology used at the Moscow Laboratory to protect doped Russian athletes which involved hiding potentially positive sample results and making false entries into ADAMS. The methodology is known as the "Disappearing Positive Methodology" (DPM). Dr. Rodchenkov stated that there were two scenarios.

175. The first scenario occurred when sample codes of known protected athletes were sent to the Moscow Laboratory. When sample codes of protected athletes were communicated to the Moscow Laboratory, the urine analysis was terminated after Initial Testing Procedures and the results were reported as negative in ADAMS. Protected athletes' samples codes were typically communicated to the Moscow Laboratory via text message (SMS) from involved Russian officials or via messenger to the Moscow Laboratory as a document including a table of athlete sample codes. If laboratory analysts detected prohibited substances, those findings were reported to Deputy Minister of Sport, Mr. Yury Dmitrievich Nagornykh.

176. The second scenario occurred when the Moscow Laboratory conducted urine analysis of a Sample Code without knowing whether it belonged to a protected athlete. In this scenario, if laboratory analysists identified prohibited substances in a urine sample after Initial Testing Procedures, the Moscow Laboratory would send an email (or a SMS on rare occasions) to a member of Deputy Minister Nagornykh's staff (the "Liaison") for a directive on how to treat the athlete (i.e. protect/SAVE or not protect/QUARANTINE). However, unlike the first scenario above, further analysis was not necessarily halted after Initial Testing Procedures. Instead, the Confirmation Procedure would typically be undertaken.

177. Dr. Rodchenkov stated that until the spring of 2012, the doping program and individual protocols of many Russian National Team athletes, in particular athletics and weightlifting, was overseen by Dr. Sergey Portugalov. In 2012, shortly before the London Olympic Games, Ms. Irina Rodionova along with Deputy Minister Nagornykh, was charged with taking over the responsibilities of overseeing athlete doping protocols.

178. In order to ensure that no athlete would test positive at the 2012 London Olympic Games, members of the Russian National Team were subject to official doping controls in June and July 2012, sometimes repeatedly, to check what the status of their urine was.

179. Further, Dr. Rodchenkov stated that athletes were officially tested and at least for the protected athletes under the supervision of the Ms. Rodionova, positive results were automatically reported as negative in ADAMS. Dr. Rodchenkov communicated the real results to, among others, Deputy Minister Nagornykh, Ms. Rodionova and Liaison Zhelanova.

180. Dr. Rodchenkov explained that on 17 July 2012 he left for the 2012 London Olympic Games, and Dr. Tim Sobolevski took over the washout program and started drafting the washout tables. He would provide these London Washout Tables to the Liaison who reported to Deputy Minister Nagornykh.

181. Dr. Rodchenkov stated that he had reviewed the documents EDP0019 to EDP0027 and *"can confirm that these are the London Washout Schedules that were produced by the experts from Moscow Laboratory in the lead-up to the London Olympic Games"*.

182. Dr. Rodchenkov described that the London Washout Tables also refer to numbers next to the prohibited substance: *"The numbers reflect the peak height, which provides an approximate estimation of the concentration of the relevant substance (or metabolite). For example, 60,000 means the concentration is around 6 ng/ml"*.

183. Dr. Rodchenkov confirmed that the two samples from the London Washout Schedules in terms of excretion were a typical and plausible washout pattern.

184. In cross-examination by the Second Respondent, Dr. Rodchenkov was asked about the London Washout Schedule and EDP 0019 and EDP0021 and confirmed that i) he was not in London when the schedules were prepared, ii) he was not involved in the testing of the samples, iii) the schedules were created by Mr. Tim Sobolevski and his team, iv) he did not know who put the names in the tables, but he knew how it was organized, and v) one of Mr. Tim Sobolevski's employees could have had access to the computer.

185. Further, Dr. Rodchenkov confirmed that i) the sample collection place was not recorded on the London Washout Schedules in respect of the 21 July 2012 sample and ii) he received the London Washout Schedules by email in London almost immediately after they were created.

186. When questioned by the Second Respondent Dr. Rodchenkov was asked why the substances and collection date in respect of the 21 July 2012 sample unlike the 15 July 2012 sample were

contained in different pages. Dr. Rodchenkov stated that this was according to Mr. Nagornykh's instructions because he did not want all the information in the same table. Therefore, he demanded the table formatted in such a way that the date of sample collection was reported on one page and the detected substances were reported on a different page. One could only get the full picture if the two pages were read together.

187. In questioning by the Second Respondent with regard to the 21 July 2012 samples that all were reported as "male", Dr. Rodchenkov answered that he did not know whether there were a males list and a females list, nor did he know if the tests in respect of the 21 July 2012 samples were collected at the same place. Further, Dr. Rodchenkov explained that neither he nor Mr. Tim Sobolevski would know if any information was wrongly entered into the schedules as the information was filled in by *"someone else in the reception zone"*.

b. Athlete evidence

188. The Athlete testified in person before the Sole Arbitrator. At the outset of her testimony, the Athlete confirmed the accuracy of her witness statement dated 12 July 2018 in support of her case. In that witness statement, the Athlete summarized her career as an elite hurdler. In 2004, she was invited to join the Russian national team and started to take part in the national training camps. That was also the first time she received a salary and decided to become a professional athlete.

189. The Athlete went on to describe her outrage and shock at being accused by the IAAF of doping. The Athlete denied that she had ever used or possessed any prohibited substances or participated in any doping scheme. She had undergone numerous doping tests during her career and had never tested positive. Further, she had never benefitted from any "protection" and no such protection would ever be necessary since her urine samples had never been "dirty". She had never provided urine samples in unofficial containers and have never been asked to do so.

190. As for Mr. Rodchenkov, the Athlete had never been approached by him or anyone associated to him. In fact, she had never heard of Mr. Rodchenkov before the alleged "Russian doping scandal" was widely publicized in the media.

191. As for the London Washout Schedule, the Athlete reiterated that she had never used any prohibited substances or doping (Duchess) cocktail, and she had no involvement in or knowledge of any doping scheme. The Athlete maintained that she did not and could not possibly know why her name appeared on these documents.

c. The findings of the Sole Arbitrator

192. The Sole Arbitrator observes that two official samples were collected one on 15 July 2012 (sample 2729325) and the other one on 21 July 2012 (sample 2729747). Both samples were negative and both were recorded in the ADAMS system.

193. The Sole Arbitrator observes that the Second Respondent does not dispute that it was her sample (sample 27299325), that was recorded in the London Washout Schedule.

194. Accordingly, the Sole Arbitrator concludes that it is the Athlete present on the London Washout Schedule in respect of the sample collected 15 July 2012 (sample 2729325). This conclusion is supported by the facts that i) the official collection date and code number and the date and code number in the London Washout Schedule are identical, and ii) the collection place of the official sample and the collection place mentioned in the London Washout Schedule are identical.

195. The Sole Arbitrator observes that the Second Respondent *"strongly disputes the allegation that (her) Sample No. 2729325 contained any prohibited substances"*.

196. As for the sample collected on 21 July 2012 (sample 2729747), the Sole Arbitrator observes that the Second Respondent *"confirms that the Sample was collected from her as indicated by ADAMS records of the Sample"*.

197. The Sole Arbitrator observes that the sample collected on 21 July 2012 (sample 2729747) in the London Washout Schedule is recorded having been collected from a male athlete. The Second Respondent maintains that, *"this fundamental and obvious flaw alone casts significant doubt on the accuracy and reliability of this document"*. The Sole Arbitrator observes that Dr. Rodchenkov in his oral testimony explained that he did not know whether there was a males list or a females list nor did he know if any information was wrongly entered into the schedules as the information was filled in *"by someone in the reception area"*.

198. The Sole Arbitrator finds, however, that the IAAF has proven to his comfortable satisfaction that it is the Athlete present on the London Washout Schedule in respect of the sample collected on 21 July 2012 (sample 2729747). The Sole Arbitrator primarily relies on the fact that i) the official collection date and code number and the date and code number in the London Washout Schedule are identical and ii) it is the same prohibited substance (desoxymethyltestosterone) with respect to the 15 July 2012 sample.

199. The Sole Arbitrator notes that the Athlete's presence on the London Washout Schedule is a strong indication that the Athlete used a prohibited substance, more specific desoxymethyltestosterone. The Sole Arbitrator finds that this indication is corroborated by the following facts:

200. First, the EDP evidence on which the IAAF relies (EDP0019; the 15 July 2012 sample and EDP0021; the 21 July 2012 sample) is authentic and contemporaneous, which is further corroborated by the testimony of Dr. Rodchenkov who testified that the documents from EDP0019 to EDP0027 were *"the London Washout Schedules that were produced by the experts from Moscow Laboratory in the lead-up to the London Olympic Games"*.

201. Second, in his testimony Dr. Rodchenkov testified that i) the purpose with the London Washout Schedule was to ensure that no athlete would test positive during the London

Olympic Games, ii) the London Washout Schedule was created after 17 July 2012 by Dr. Tim Sobolevski, iii) the samples were tested in the Moscow Laboratory by Dr. Tim Sobolevski and his team, and iv) all sample code numbers were sent to Dr. Rodchenkov by Ms. Rodionova, the Deputy Director of the CSP and/or by Mr. Alexey who provided the information via text messages. Dr. Rodchenkov's testimony is consistent with and supportive of the other corroborating facts.

202. Third, in his testimony Dr. Rodchenkov confirmed that the two samples from the London Washout Schedule in terms of excretion were typical and plausible washout patterns.

203. Fourth, the proximity between the dates mentioned in the London Washout Schedule and the Athlete's participation in the London Olympic Games indicates that the Athlete used the prohibited substance to prepare for the 2012 London Olympic Games.

204. The Sole Arbitrator observes the Second Respondent's assertion that the London Washout Schedule in respect of the 15 July 2012 sample (sample 2729325) does not establish the presence of oxandrolone, metenolone or trenbolone, which shows that i) the IAAF's assertion that the Athlete took the "Duchess Cocktail" as part of the London Washout Testing program is unavailing and ii) the IAAF has no explanation why desoxymethyltestosterone was allegedly found in her sample.

205. The Sole Arbitrator concedes that the finding of desoxymethyltestosterone in the Athlete's sample does not establish to his comfortable satisfaction that the Athlete took the Duchess Cocktail. The Sole Arbitrator finds, however, that the IAAF has established to his comfortable satisfaction that the Athlete used a prohibited substance, more specific desoxymethyltestosterone.

206. The Sole Arbitrator notes that i) he has not been presented with any theory or alternative explanation for the Athlete's presence on the London Washout Schedule, and ii) it is difficult to conceive of any plausible innocent explanation for the Athlete's presence on the London Washout Schedule. Therefore, the Sole Arbitrator is willing to accept that the Athlete was one of the protected athletes who featured on the London Washout Schedules and whose positive samples in the lead-up to the London Olympic Games were automatically reported negative in ADAMS without the need of a specific SAVE email.

207. Based on the above, the Sole Arbitrator finds that the IAAF has proven to his comfortable satisfaction that the Athlete violated Rule 32.2(b) of the 2012-2013 IAAF Rules.

208. The Sole Arbitrator will now proceed to examine whether it is the Athlete present on the Moscow Washout Schedule and in the affirmative, whether she used a prohibited substance.

5. The Moscow Washout Schedule?

a. Factual evidence by Dr. Grigori Rodchenkov

209. Dr. Rodchenkov explained that after a WADA visit at the Moscow Laboratory in 2012 it became clear that only clean urine could be collected in official BEREG-KIT bottles. Therefore, it was decided going forward to conduct washout testing using unofficial samples. Most of these samples were collected in soda bottles or other plastic bottles.

210. Dr. Rodchenkov explained that the bottles would indicate the athlete's name as well as the collection date. The athletes were identified on documents entitled *"Tim_Nag" (i.e. Timofei (Sobolevsky) – Nagornykh)"*. These documents were updated to reflect the progress of the washout testing.

211. Dr. Rodchenkov went on to explain that it was his understanding that the athletes on the washout-programme were instructed to take the Duchess Cocktail (composed of trenbolone, methenolone and oxandrolone). However, many of them used other doping protocols: *"Indeed, Alexy Kiushkin – the assistant to Mrs. Rodionova – was in charge of preparing the Duchess Cocktail, and he was known to experiment. In particular, he provided prohormones containing methasterone to athletes. This was a shock before the 2013 World Championships, as the washout of methasterone was known to be slow and its long-term metabolite was detectable for a long period of time"*.

212. Dr. Rodchenkov stated that each week Ms. Rodionova, Mr. Velikodny and he would meet with Deputy Minister Nagornykh in his office to discuss the results of the unofficial testing. Usually, the results were included in the Moscow Washout Tables, which were printed out and brought to the meeting with Mr. Nagornykh to provide a status update. The Moscow Washout Tables also helped to organize the pre-testing before the World Championships. The IAAF was operating its pre-competition testing through RUSADA such that it was often possible for RUSADA officials to postpone and interfere with the timing of doping controls. Therefore, when it was expected that the athlete would not test positive in view of the results of an unofficial sample (marked with "parallel representation" in the Moscow Washout Table) (s)he was sent to RUSADA to provide an official out-of-competition sample.

213. Dr. Rodchenkov stated that he had reviewed the documents at EDP0028 to EDP0038 and *"can confirm that these are the Moscow Washout Schedules that Dr. Sobolevsky created in the lead up to the Moscow World Championships"*.

214. The examination-in-chief of Dr. Rodchenkov is summarized as follows:

- Dr. Tim Sobolevski would report the results of the testing to Dr. Rodchenkov who passed the information on to Ms. Rodionova and the Deputy Minister Nagornykh.

- The Moscow Washout Schedule was created and filled out by Dr. Tim Sobolevski. The spreadsheets were passed on to Dr. Rodchenkov who edited the spreadsheets to make

them more presentable and then passed them on to the Deputy Minister of Sport either in person or a print out to Ms. Irina Rodionova

- Unlike the London Washout Schedules, the urine samples were collected in unofficial bottles and the Athlete's name and collection date would be on the bottle.

- It came as a chock to find samples with methastorone because it stayed in the body for such a long time and the finding came just a month and a half prior to the World Championships.

- All athletes on the national team used doping. He knew the coach of the Athlete and knew that he the coach provided her with doping.

215. In response of questioning from the Second Respondent, Dr. Rodchenkov explained that the expression "parallel representation" meant that an athlete could represent two different regions at the same time. However, in this context where "parallel representation" was next to unofficial samples in the Moscow Washout Schedules it meant that unofficial samples were collected and tested and entered into the Washout Schedule.

216. In response of questioning from the Second Respondent, Dr. Rodchenkov explained that several athletes' names disappeared from the Washout Schedules for various reasons, i.e. they did not make it to the national team before the World Championships therefore they were deleted from the list not to overload the Minister with too much information.

217. In response of questioning from the Second Respondent, Dr. Rodchenkov's explained that he knew that the Athlete did not participate in the World Championships in Moscow and therefore, the Athlete was deleted in the following list as she did not make it to the national team.

218. Asked by the Second Respondent if anyone on the list would be sent abroad to compete, if the list still showed certain substances, Dr. Rodchenkov answered that it depended on the type and concentration of the substance and the type of competition. Some laboratories did not have the same equipment as the Moscow Laboratory and they would not be able to detect certain substances, e.g. methastorone.

219. In response of questioning by the Second Respondent, Dr. Rodchenkov stated that i) he could not imagine any unofficial bottle with a wrong name tag, and ii) there would have been several ways to find out if it was the wrong name on the bottle.

220. Dr. Rodchenkov confirmed that he had not seen the Athlete take any prohibited substances.

221. In its redirect, the IAAF addressed the Second Respondent's question whether an athlete on the Washout Schedule could travel and compete abroad. The IAAF stated that the Moscow Washout Schedule in respect of the 26 July 2013 sample showed the presence of methastorone and testosterone and on the 27 July 2013, the Athlete participated in a minor competition in

Tallinn in Estonia. Asked if an athlete would have been allowed to compete in such a minor event with those substances marked on the Washout Schedule, Dr. Rodchenkov answered that i) the samples dated on 26 July 2013 was not collected on this date, this was the date where the consolidated data of samples collected at the Russian National Championship in Cheboksary were received, so *"this may have been the day or two days prior collection"*, and ii) all the tests from Tallinn were sent to the WADA accredited laboratory in Helsinki and the laboratory would not be able to detect the substances reflected in the Washout Schedule, specifically methastorone which could only be detected by the Moscow Laboratory, and the testosterone would have completely gone in one day.

222. In her redirect, the Second Respondent asked the question that a sample had been collected in Tallinn and sent to Helsinki, the sample would still be in Helsinki to be tested at a later date, Dr. Rodchenkov answered that all samples were destroyed three months after the results had been uploaded to ADAMS.

b. Expert evidence by Prof. Christophe Champod

223. The IAAF relies on expert scientific evidence from Prof. Christophe Champod, a professor of forensic science at the Ecole des Sciences Criminelles at the Faculty of Law, Criminal Justice and Public Administration at the University of Lausanne. Prof. Champod testified orally before the Sole Arbitrator.

224. The IAAF explained that it relied primarily on the London Washout Schedules and the Moscow Washout Schedules in asserting that the Athlete has used prohibited substances. Further, the IAAF maintained, that by finding that the two samples of Mr. Shustov and Ms. Bulgakova from 2013 World Championships that were stated on the Moscow Washout Schedule to be positive were subject to swapping, the forensic evidence of Prof. Champod was one of a number of elements that confirmed the content of the Moscow Washout Schedules.

225. Prof. Champod confirmed that he and his team following two requests from WADA dated 20 July 2018 and 18 September 2018 had carried out the examination of seven BEREG-KIT bottles (B sample) for potential scratches and marks on the inner side of their plastic caps. All the samples were negative i.e. contained no indication of tampering expect for two samples (bottle number B290860 and B2807883) The IAAF explained that these bottles belonged to two Russian Athletes, Mr. Shustov and Mr. Bulgakova.

226. Prof. Champod went on to explain his methodology and his F, U and T mark classification system, e.g. that multiple T marks are not compatible with an ordinary use of the bottle. Prof. Champod explained that he and his team had never observed empirically T marks on bottles that had been regularly closed. The nature of the T marks, their shape and compatibility with the working of tools at multiple locations allowed Prof. Champod and his team to conclude that these results are more than a 1000 times more probable if the bottle had been initially closed, the forcibly opened and resealed with the same cap rather than if had been used and

closed following regular instructions without any wrongdoing. This observation provide very strong support for the proposition that the bottle had been tampered.

227. In cross-examination by the Second Respondent, Prof. Champod confirmed that i) he had no knowledge of the Athlete, ii) no idea whether he had tested a bottle of the Athlete, iii) his findings of different marks on bottles gives strong support that they had been re-opened, but are no direct evidence, and iv) that he had looked for alternative ways to producing the different marks on the bottles, but they turned out not to be relevant.

c. Athlete evidence

228. As for the Moscow Washout Schedule, the Athlete maintained that there was no sound reason to rely on this dubious Excel spreadsheet to assume that such "unofficial samples" of hers actually existed and that their alleged "results" can be trusted. Being part of a washout program simply made no sense in light of the Athlete's personal situation at that time, as she was recovering from a knee surgery and unable to compete.

229. The Athlete stated that she had heard about the Duchess cocktail as it was mentioned by the mass media in Russia. However, she only learnt about the names of the ingredients of the Duchess cocktail from the internet.

230. In cross-examination by the Claimant, the Athlete stated among other things that i) she did not submit her blood pass together with her witness statement, but she cannot remember why, ii) that she did not know the names of the prohibited substances in the Duchess cocktail, iii) she knew that testosterone was prohibited, iv) she read the short version of WADA's Prohibited List every year, vi) she took sport supplements, e.g. mineral acids, proteins and medications for flue, that she checked herself for prohibited substances, and vi) she accepted that there had been widespread doping use in Russia.

231. In her final statement, the Athlete contended that i) she acknowledged the widespread use of doping in Russia, but she is a clean athlete, ii) she was not a protected athlete, iii) she was not present in Cheboksary in 2013 where the testing were assumed to have taken place as suggested by Dr. Rodchenkov, iv) she had made a telephone call to her coach, who confirmed that she did not know Dr. Rodchenkov, v) it is very unpleasant and painful to be accused of having used prohibited substances, and vi) she was still training when she was pregnant with her son, and she would never risk his health using prohibited substances.

d. Findings of the Sole Arbitrator

232. The IAAF asserts that the four unofficial samples on the Moscow Washout Schedule are listed as belonging to the Athlete; they date from 28 June and 6, 14 and 26 July 2013.

233. The Second Respondent, *inter alia*, maintains that i) the origin of the Moscow Washout Schedule is dubious and cannot be verified, ii) anyone could have written the Athlete's name next to the samples, iii) there is not produced any witness evidence suggesting that the Athlete

was part of the Moscow Washout Testing program and that she provided "unofficial samples" for this purpose, and iv) the McLaren Report is based solely on the allegations of Dr. Rodchenkov who has admitted that he has no firsthand and specific knowledge of the distribution of the Duchess Cocktail and the Washout Testing program.

234. The Sole Arbitrator observes the Second Respondent's assertion that the IAAF failed to check whether the name on the Moscow Washout Schedule were that of another Russian athlete, more specific a Ms. Alina Galitskaia. As explained by the IAAF, and not disputed by the Second Respondent, Ms. Alina Galitskaia is not an International-Level Athlete, her seasoned best in 2013 for the 400 m was 54,99, and the B qualifying standard for the Moscow World Championship was 52,35 and she ended up as number 25 in the Russian National Championship. The Sole Arbitrator holds that it is not credible that the name in the Moscow Washout Schedule is that of Ms. Alina Galitskaia.

235. The Sole Arbitrator observes that Dr. Rodchenkov stated that i) he did not know who put the names in the Washout Schedules, but he knew how it was organized, and ii) neither he nor Mr. Tim Sobolevski would know if any information was wrongly entered into the schedules as the information was filled in by *"someone else in the reception zone"*.

236. The Sole Arbitrator notes that i) the Athlete is mentioned in the Moscow Washout Schedule four times, which indicates that the Athlete's presence is not the result of a filing failure, and ii) the fact that Dr. Rodchenkov did not know who filled in the Washout Schedules is not, *per se,* an indicative of a filing failure. On this background, the Sole Arbitrator holds that no inference can be drawn that the Athlete's name was wrongly assigned to the Moscow Washout Schedule.

237. Accordingly, the Sole Arbitrator finds that the IAAF has proven to his comfortable satisfaction that it is the Athlete present on the Moscow Washout Schedule in respect of the four samples listed as belonging to the Athlete.

238. The Sole Arbitrator notes that the Athlete's presence on the Moscow Washout Schedule is a strong indication that the Athlete used prohibited substances, more specific methasterone, trenbolone, 1-testosterone, boldenone, oxabolone and norandrosterone. The Sole Arbitrator finds that this indication is corroborated by the following facts:

239. First, the EDP evidence on which the IAAF relies (EDP0034) is authentic and contemporaneous, which is further corroborated by the testimony by Dr. Rodchenkov who testified that he had reviewed the documents at EDP0028 to EDP0038 and *"can confirm that these are the Moscow Washout Schedules that Dr. Sobolevski created in the lead up to the Moscow World Championships"*.

240. Second, the detailed and consistent testimony by Dr. Rodchenkov who testified that i) the purpose with the Moscow Washout Schedule was to ensure that no athlete would test positive during the 2013 IAAF World Championships in Moscow, ii) the Moscow Washout Schedule was created and filled out by Dr. Tim Sobolevski and his team or by someone in the reception

area, and iii) the spreadsheets were passed on to Dr. Rodcenkov who edited the spreadsheets to make them more presentable and then passed them on to the Deputy Minister of Sport either in person or in a print out to Ms. Irina Rodionova.

241. Third, in his testimony Dr. Rodchenkov confirmed that the four samples in terms of excretion were typical and plausible washout patterns. The samples of methastorone from the Moscow Washout Schedule showed in terms of excretion a very clear picture of washout.

242. Fourth, the samples indicate the presence of a number of anabolic steroids *viz.* methasterone, trenbolone, boldenone, 1-testosterone, oxabolone and norandrosterone, of which two were components in the Duchess Cocktail, more specific oxandrolone and methasterone.

243. Fifth, the proximity between the dates mentioned in the Moscow Washout Schedule (28 June and 6, 14 and 26 July 2013) and the Moscow IAAF World Championships (10 to 18 August 2013).

244. The Sole Arbitrator observes the Second Respondent's assertion that the Athlete in December 2012 underwent an arthroscopy surgery of her left knee joint, which did not allow her to compete during the 2013 winter season. In May 2013, the Athlete started again, however, the surgery further impacted her results during the 2013 summer season during which she performed poorly. As a result the Athlete was not able to qualify to the 2013 Moscow IAAF World Championships, which were held from 10 to 18 August 2013. The Athlete's best performance for the 100 m hurdles that summer was not good enough to meet the 12.93s threshold in order to qualify for and participate in the World Championships. The Athlete's personal condition made no sense for her to be enrolled in any doping program during summer 2013.

245. Further, the Sole Arbitrator observes the IAAF's response to the Second Respondent's assertion in which it states, *"As a preliminary matter, the need to make qualification time for a major championship in short order after injury would rather be an incentive to dope (than a disincentive). In any event, the statement is wrong: Whereas the A standard qualifying time was 12.94s, the B standard was 13.10s, which she* [the Athlete] *achieved during the qualification period at the Russian Championships on 24 July 2013 (12.98s)".*

246. The Sole Arbitrator finds the Athlete's assertion on her personal condition to be inadequate and irrelevant to the present proceedings as she, which she does not dispute, during the qualification period for the 2013 Moscow World Championships was competing in the Russian Championships on 24 July 2013.

247. Further, the Sole Arbitrator observes, that the Athlete, in her final pleadings, maintained that, with respect to the 26 July 2013 sample identified on the Moscow Washout Schedule, she was not present in Cheboksary in 2013 where the testing were assumed to have taken place as suggested by Dr. Rodchenkov. The Sole Arbitrator notes that Dr. Rodchenkov in his testimony did not suggest that the 26 July 2013 samples were collected in Cheboksary, instead

Dr. Rodchenkov stated that the 26 July 2013 samples had been collected either on the same date (26 July 2013) or two days before (to 26 July 2013).

248. The Sole Arbitrator notes that i) he has not been presented for any theory or alternative explanation for the Athlete's presence on the Moscow Washout Schedule, and ii) it is difficult to conceive of any plausible innocent explanation for the Athlete's presence on the Moscow Washout Schedule. Therefore, and based on the above, the Sole Arbitrator is willing to accept that the Athlete's samples in the Moscow Washout Schedules were collected "under the table" in unofficial containers and this could not have been done without the knowledge of the Athlete.

249. Based on the above, the Sole Arbitrator finds that the IAAF has proven to his comfortable satisfaction that the Athlete violated Rule 32.2(b) of the 2012-2013 IAAF Rules.

250. The Sole Arbitrator will now proceed to consider the appropriate sanction for the Athlete's ADRV.

D. Sanction

1. Period of Ineligibility Start and End Date

251. Pursuant to Rule 40.2 of the 2012-2013 IAAF Rules, the period of ineligibility for violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of the ineligibility (Rules 40.4 and 40.5 of the 2012-2013 IAAF Rules) or for increasing it (Rule 40.6 of the 2012-2013 IAAF Rules) are met.

252. Rule 40.6 of the IAAF Rules reads as follows:

> *"[…]*
> ***Aggravating Circumstances which may Increase the Period of Ineligibility***
> *[…] If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) 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 a 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 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 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.

[…]".

253. In addition, Rule 40.7(d)(i) of the 2012-2013 IAAF Rules set out that *"the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)".*

254. The IAAF maintains that a number of aggravating factors are relevant in the present case, i) the Athlete used a wide variety of anabolic steroids on multiple occasions in the lead-up to the 2012 London Olympic Games and the 2013 Moscow World Championships, thereby committing multiple ADRVs, ii) the Athlete was part of a centrally dictated doping scheme, and iii) the unofficial washout testing was carried out in the run up to the most important event organized by the IAAF, i.e. the World Championships in Russia. In view of the multiplicity of the aggravating circumstances, the IAAF submits that the only appropriate period of ineligibility would be the maximum four years.

255. The Second Respondent holds that the principle of proportionality requires that i) there must be a *"reasonable balance"* between the misconduct and the sanction (cf. CAS 2005/C/976 & 986 Advisory Opinion), ii) a proportionate sanction must be *"capable of achieving the envisaged goal"*, *"necessary to reach the envisaged goal"* and *"justified by the overall interest in achieving the envisaged goal"* (cf. CAS 2005/C/976 & 986 Advisory Opinion), and iii) determining the appropriate sanction is a fact-specific exercise (CAS 2011/A/2818). In the present case, the Athlete is an athlete with a clean doping record with no prior doping test results or ADRVs. There is CAS case law confirming that a four-year period of ineligibility is disproportionate for a first ADRV even if there are aggravating circumstances (cf. CAS 2015/A/3915). Given the Athlete's untarnished doping record a period of ineligibility of four years be grossly disproportionate. For these reasons, the period of ineligibility should be the standard sanction of two years.

256. Previously, the Sole Arbitrator concluded that the Athlete was one of the protected athletes who featured on the London Washout Schedules and whose positive samples in the lead-up to the London Olympic Games were automatically reported as negative in ADAMS without the need of a specific SAVE email.

257. Previously, the Sole Arbitrator concluded that the Athlete's samples in the Moscow Washout Schedules were collected "under the table" in unofficial containers and this could not have been done without the knowledge of the Athlete.

258. Further, the Sole Arbitrator observes that the Athlete used the following prohibited substances *viz.* desoxymethyltestosterone (2012) and methasterone, trenbolone, boldenone, testosterone, oxabolone and norandrosterone (2013), and he therefore concludes that the Athlete used multiple prohibited substances on more than one occasion.

259. Considering the seriousness of the Athlete's ADRV and the fact the Athlete used multiple prohibited substances on more than one occasion, the Sole Arbitrator finds that a period of

ineligibility of four (4) years starting on the date of the present Award is appropriate to the severity and the Athlete's misbehavior.

260. As for the Second Respondents submissions on proportionality, the Sole Arbitrator notes that the WADA Code has been drafted to reflect the principle of proportionality, thereby relieving the need for the adjudicating body to apply this principle. In other words, the principle of proportionality is "built into" the WADA Code and the 2012-2013 IAAF Rules (see CAS 2007/A/1290). It follows, therefore, that the Sole Arbitrator cannot consider the application of the principle of proportionality.

2. Disqualification

261. Rule 40.8 of the 2012-2013 IAAF Rules provides as follows:

> *"In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all competitive results obtained from the date the positive Sample was collected (whether in-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all the resulting Consequences for the Athlete including the forfeiture of any medals, awards, medals, points and prize and appearance money".*

262. The IAAF maintains that all competitive results by the Athlete from 15 July 2012 through to the commencement of any period of provisional suspension or ineligibility are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).

263. Primarily, the Second Respondent holds the 2012-2013 IAAF Rules do not require the disqualification of the Athlete's competitive results and the IAAF's request must be dismissed, *inter alia*, for the following reasons i) the Athlete underwent numerous doping tests during her career which all proved to be negative, including before and after the alleged ADRVs, ii) the competitive results obtained by the Athlete during her entire career show that she did not draw any unfair advantage from the alleged ADRV, as her competitive results were poor, iii) the IAAF has not adduced any evidence that the subsequent performances of the Athlete were in any way affected by the alleged ADRV, and iv) the IAAF, which was already in possession of all of the documentary evidence upon which it relies, chose not to provisionally suspend the Athlete.

264. Subsidiarily, the Second Respondent holds that the disqualification period must be limited to the results obtained from 15 July 2012 until the end of July 2013, i.e. during the period of the alleged ADRVs.

265. The Sole Arbitrator observes that the IAAF seeks disqualification of all results of the Athlete for all competitions in which she took part from 15 July 2012 until the date of the CAS Award, together with the forfeiture of any prizes, medals, prize money and appearance money. This

is a period of more than six and a half years and is considerably longer than the maximum period of ineligibility of 4 years that can be imposed according to the IAAF Rules.

266. The Sole Arbitrator notes that pursuant to the literal wording of Rule 40.8 of the 2012-2013 IAAF Rules all the competitive results of the Athlete as from 15 July 2012 (the date the Athlete first appears on the London Washout Schedules) until the date of the CAS Award would have to be disqualified.

267. Therefore, based on the literal reading of Rule 40.8 of the 2012-2013 IAAF Rules, in principle all results of the Athlete as from 15 July 2012 until the date of the CAS Award would have to be disqualified, despite the fact that the IAAF has not provided any evidence of doping use by the Athlete between 21 July 2012 (the date the Athlete last appears on the London Washout Schedules) and 28 June 2013 (the date the Athlete first appears on the Moscow Washout Schedules); and between 26 July 2013 (the last date the Athlete appears on the Moscow Washout Schedules) until the date of the CAS Award.

268. The Sole Arbitrator aligns with CAS 2016/O/4464 at para. 182 and the observation made in this Award by the Sole Arbitrator, that *"the length of the period of ineligibility to be imposed must be defined considering the disqualification of the Athlete's results, which come equal to the effects of a retro-active suspension"*.

269. The Sole Arbitrator agrees with the Athlete that the general principle of fairness must prevail in order to avoid disproportional sanctions.

270. According to established CAS jurisprudence, the principle of proportionality requires to assess whether a sanction is appropriate to the violation committed in the present case. Excessive sanctions are prohibited (see e.g. CAS 2005/A/830 at paras. 10.21-10.31; CAS 2005/C/976 & 986 at paras. 139, 140, 143, 145-158; CAS 2006/A/1025 at paras. 75-103; CAS 2010/A/2268 at paras. 141 et seq.; CAS 2016/O/4463 at paras. 170 et seq.; CAS 2016/O/4464 at paras. 187 et seq., and CAS 2016/O/4469 at paras. 182 et seq., all of them referring and analyzing previous awards, cases from the European Court of Human Rights and doctrine).

271. The Sole Arbitrator in the present case aligns with the Panel in CAS 2005/C/976 & 986 stating at para. 143:

> *"To find out, whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender"*.

272. The Sole Arbitrator has previously concluded that the Athlete's positive samples in the lead-up to the London Olympic Games were automatically reported as negative in ADAMS without the need of a specific SAVE email, and that she used multiple Prohibited Substances on more than one occasion. Therefore, the Athlete's doping is severe, repeated and sophisticated. The Sole Arbitrator considers that it is not appropriate to maintain results on

the basis of fairness where the doping is severe, repeated and sophisticated (cf. e.g. CAS 2013/A/3274 at paras. 84-89).

273. However, the Sole Arbitrator aligns with CAS 2016/O/4469 at para. 176, the need to *"Taking into regard that the sanction of disqualification of results embraces the forfeiture of any titles, awards, medals, points and prize and appearance money, the sanction of disqualification is to be held equal to a retroactive imposition of a period of ineligibility and, thus, is a severe sanction"*.

274. Further, the main purpose of disqualification is not to punish the transgressor, but rather to correct any unfair advantage and remove any tainted performances from the record (cf. CAS 2016/A/4464 at para. 194 and CAS 2016/O/4469 at para. 176 with further references to doctrine).

275. Having thus considered, on one hand, the seriousness of the Athlete's breach and, on the other hand, the main purpose and the consequences of a disqualification period, the Sole Arbitrator finds that it is proportionate to disqualify all competitive results obtained by the Athlete between 15 July 2012 until 31 December 2014, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Association of Athletic Federations (IAAF) on 26 April 2018 against the Russian Athletics Federation and Ms. Ekaterina Galitskaia is partially upheld.

2. Ms. Ekaterina Galitskaia has violated Rule 32.2(b) of the 2012-2013 IAAF Rules.

3. A period of ineligibility of four (4) years is imposed on Ms. Ekaterina Galitskaia starting on the date of this Award.

4. All results achieved by Ms. Ekaterina Galitskaia from 15 July 2012 until 31 December 2014 are disqualified, including forfeiture of any titles, awards, medals, points and prize and appearance money obtained during this period.

5. (…).

6. (…).

7. All other and further prayers or request for relief are dismissed.