



Arbitration CAS 2018/O/5713 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) & Yuliya Kondakova, award of 1 February 2019

Panel: Mr Murray Rosen QC (United Kingdom), Sole Arbitrator

Athletics (hurdles)

Doping (use or attempted use of a prohibited substance)

Means of proof

Reliability of each and every element of proof vs reliability of evidence as a whole

Application of the fairness exception with regard to disqualification of results

Aggravating circumstances

1. **Facts related to an anti-doping rule violation (ADRV) 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 and analytical information.**
2. **Circumstantial evidence might be compared to a rope comprised of several cords: one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Therefore, it is not necessary that every element of proof on its own surmount the required standard of comfortable satisfaction, but the evidence as a whole must constitute reliable means for the determination on which an adjudicating body is comfortably satisfied that an athlete indeed committed an ADRV.**
3. **CAS panels have broad discretion in adjusting the disqualification period to the circumstances of the case. Some CAS panels, in individual cases, have previously considered that it would be unfair to disqualify all results since the doping found, even in the case of a doping scheme. Others have held that it was not appropriate to maintain results on the basis of fairness where the doping was severe, repeated and sophisticated. CAS panels have not infrequently applied the fairness exception and let results remain partly in force, in particular when (a) the disqualification period extends over many years and (b) there is no evidence that the athlete had committed violations over the whole period from the first violation to the commencement of the provisional suspension or ineligibility.**
4. **The fact that an athlete used prohibited substances in the lead-up to the most important competitions as part of a lengthy, sophisticated and concealed training scheme involving many others, and providing samples falsely reported as being clean and unofficial samples for washout testing are severe aggravating circumstances warranting an increase of the standard period of ineligibility.**

I. PARTIES

1. The International Association of Athletics Federations (“the IAAF” or “Claimant”) is the international federation governing the sport of athletics worldwide, registered in Monaco.
2. The Russian Athletic Federation (“RUSAF” or “First Respondent”) is the national governing body for athletics in Russia. RUSAF is registered in Moscow, is and (subject to its suspension as mentioned below) is the Member Federation of the IAAF for Russia.
3. Ms Yuliya Kobdakova (“Athlete” or “Second Respondent”) is a 36-year old Russian hurdler and an International-Level Athlete for the purposes of the IAAF Rules referred to below, who participated at the 2012 London Olympic Games and the 2013 Moscow World Championships.

II. FACTUAL BACKGROUND

4. The following is a brief summary to assist in the understanding of this award, derived from the parties’ lengthy submissions and evidence (all of which have been considered by the Sole Arbitrator and do not require reiteration at this stage). It is necessarily selective and should not be read as connoting the relative significance of any particular fact.
5. In these proceedings the IAAF pursues allegations of anti-doping rule violations (“ADRVs”) against the Athlete, to the effect that the Athlete participated in and/or benefitted from anabolic steroid doping programs in 2012-2013 and in particular:
 - (a) prior to the 2012 London Olympic Games, used oral Turinabol, a commercial name for DHCMT (Dehydrochloromethyltestosterone);
 - (b) prior to the 2013 Moscow World Championships, used Methasterone.
6. Turinabol and methasterone are and were at the relevant times both prohibited under section S.1(a) of the World Anti-Doping Agency (“WADA”) List.
7. By a letter dated 24 November 2017 from the IAAF’s Athletics Integrity Unit (“the AIU”), the AIU alleged that the Athlete had committed the ADRV and on 6 December 2017, the Athlete provided explanations to the AIU, as requested, denying the allegations.
8. On 31 January 2018, the AIU informed the Athlete that it maintained the ADRV allegations, which would accordingly be referred to the Court of Arbitration for Sport (“CAS”) under the Code of Sports-Related Arbitration, 2017 edition (“the Code”) either before a Sole Arbitrator with a right of appeal to the CAS or before a three-member Panel with no right of appeal, save to the Swiss Federal Tribunal.
9. On 12 February 2018, the Athlete indicated that she would prefer a hearing before a three-member CAS panel; but, upon consultation, WADA did not give its consent to that request

as required under the IAAF Rules referred to below, and as a result the AIU informed the Athlete that the case before CAS would be heard by a sole arbitrator (with a right to appeal).

10. By way of background, it is widely known that on 16 July and 9 December 2016 Professor Richard McLaren issued two reports as the Independent Person (“IP”) appointed by WADA to investigate allegations of systemic doping practices in Russian sport, based largely on evidence from “whistleblowers” including Dr Grigory Rodchenkov, formerly director of the WADA-accredited Moscow testing laboratory.
11. The findings in the McLaren Reports are not in themselves relied on against the Athlete for the purpose of these proceedings, which turn on the authenticity of and weight to be attached to the underlying evidence in those investigations as referred to below, and not on the validity or strength of the IP’s analysis thereof.
12. The Evidence Disclosure Package relied on by the McLaren Reports and allegedly retrieved from the hard-drive of Dr Rodchenkov (“the EDP”) was made publicly available, as posted on the website <https://www.ipevidencedisclosurepackage.net/>.
13. The McLaren Reports purported to identify numerous Russian officials and athletes who were allegedly involved in or benefitted from doping schemes and practices referred to in the EDP, including the Athlete (identified by codes A0379 and A0380).
14. The McLaren Reports also claimed that the Russian “... *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*” by the use of various counter-detection schemes in which Dr Rodchenkov was a major participant.
15. The alleged schemes included:
 - (a) First, a “Disappearing Positives Methodology” allegedly used from late 2011 to the effect that, if and when the initial screen of an athlete’s sample revealed an Adverse Analytical Finding, the Russian Ministry of Sport would (through a liaison such as Mr Alexey Velikodniy) decide either to “SAVE” or to “QUARANTINE” the athlete in question: if the athlete was “SAVED”, the Moscow Laboratory would report the sample as negative in ADAMS and make the necessary manipulations in LIMS, whereas if the athlete was “QUARANTINED”, analysis of the sample would continue and the AAF would be reported in the ordinary course.
 - (b) Secondly, “Washout Testing” devised in 2012 (when Dr. Rodchenkov developed the “Duchess” cocktail of the prohibited substances Oxandrolone, Metenolone and Trenbolone, with a short detection period) to determine whether athletes on doping programmes were likely to test positive at the 2012 London Olympic Games: when an official sample was screened as positive, it was automatically reported as negative in ADAMS but the true results were recorded on “London Washout Schedules”; and when it was appreciated that in time it would be discovered that the contents of the samples did not match the entries in ADAMS/LIMS, Washout Testing ceased to use samples in

official “Bereg” kits but instead used unofficial bottles collected at regular intervals, to determine the rate at which the quantities of prohibited substances were declining (as updated on the “Moscow Washout Schedules”) so that the athlete was passed to test “clean” in competition, or would be withdrawn.

(c) Thirdly, a “Sample Swapping Methodology” allegedly trialed in 2013 and rolled out for the 2014 Winter Olympic Games, to the effect that any “dirty” urine would be replaced by an FSB team (which removed the cap on sealed B sample bottles monthly) using “clean” urine from a “Clean Urine Bank” of unofficial samples also recorded in schedules and maintained at the Moscow Laboratory.

16. A number of other Russian athletes and officials identified by Dr Rodchenkov and/or the London and Moscow Washout Schedules have been found to have committed ADRVs in and since 2012-13.
17. The Athlete had a long and successful career and was coached for most of her 24 years by Mr Andrei Klymov. Mr Klymov also coached Mr Denis Alexeev, an athlete who incurred ADRV findings for oral Turinabol in 2008.
18. At numerous meetings between 26 November 2015 and 4 December 2018, the IAAF Council decided first that RUSAF should be suspended and then that it had not met the conditions for reinstatement to IAAF membership.

III. PROCEEDINGS BEFORE CAS

19. On 26 April 2018 the IAAF filed its request for arbitration against the Respondents, to be considered as both its Statement of Appeal and Appeal Brief, under Articles R47, R48 and R51 of the Code.
20. In accordance with the IAAF Rules and as RUSAF was suspended as referred to above, the matter fell to be heard by CAS as a first-instance body, assigned to the CAS Ordinary Arbitration Division, but subject to the rules of the Appeals Division.
21. On 19 June 2018 and in accordance with Article R54 of the Code, the CAS Court Office informed the parties that Mr Murray Rosen QC, Barrister in London, United Kingdom, had been appointed as the Sole Arbitrator.
22. RUSAF did not submit any Answer but sent a letter on 16 July 2018 explaining its non-participation in the proceedings, and on the same day the Athlete filed her Answer in accordance with Article R55 of the Code.
23. The IAAF filed its Reply on 23 August 2018.
24. On 12 September 2018 the CAS Court Office issued an Order of Procedure on behalf of the Sole Arbitrator which was countersigned and returned by the parties on 24 September and 1 October 2018 respectively.

25. On 5 October 2018 the Athlete filed her Second Response (entitled “Rejoinder”).
26. In accordance with Article R44.2 and Article R57 of the Code, the parties, experts, and witnesses, were heard at a hearing on 17 October 2018 at the CAS Court Office in Lausanne, Switzerland. The Sole Arbitrator was assisted by Ms Pauline Pellaux, CAS counsel.
27. In attendance were:
- (a) Messrs Ross Wenzel and Nicolas Zbinden of Kellerhals Carrard and Huw Roberts of the IAAF, for whom Dr Rodchenov and Mr Andrew Sheldon as expert gave evidence by Skype. Pursuant to a request from the IAAF granted by the Sole Arbitrator, Dr Rodchenov testified from behind a screen and in presence of an interpreter (Ms Tatiana Hay) and his legal counsel (Ms Avni Patel of Walden Macht & Haran, who was not allowed to intervene unless she considered that a question put Dr Rodchenov’s safety at risk); and
 - (b) the Athlete, participating throughout (including her evidence and closing statement) also by Skype, and in person Mr Philippe Bärtsch, Mr Christopher Boog, Ms Julie Raneda, Mr Sebastiano Nessi and Ms Ksenia Iliyash of Schellenberg Wittmer SA, together with Messrs Andrey Dolgov and then Mr Victor Berznoy as interpreters, and Mr Manuel Rundt and Ms Irene Wilson as experts giving evidence by Skype and in person respectively.
28. At the beginning and end of the hearing the representatives for both the IAAF and the Athlete stated that they had no complaints regarding the procedures in this case, and that their rights to a fair hearing had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Claimant’s submissions

29. The IAAF submitted among other things that:-
- (a) The Athlete’s use of DHCMT was proved by the record for sample 2729632 collected on 17 July 2012 on one of the London Washout Schedules in the EDP, which indicated that it contained “*oral turinabol 6000*” although that sample was reported negative in ADAMS.
 - (b) The Athlete’s use of Methasterone was proved by 4 (unofficial) samples on the Moscow Washout Schedules in the EDP (see for example EDP0028), dated and with comments as follows:
 - (i) 10 July 2013 - “*methasterone (80 000), long-term metabolite 2 200 000 too much ... Almost no testosterone of own (0,2 ng) !!!*”;
 - (ii) 17 July 2013 - “*methasterone long-term metabolite 2 500 000 too much ... No testosterone of [your] own !!!*”;

- (iii) 24 July 2013 - “*metabolite methasterone 600 000 a lot*”; and
- (iv) 31 July 2013 “*methasterone metabolite 150,000*”.

and an email to Mr Velikodniy dated 2 August 2013 in the EDP, stating that the Athlete’s sample 2807983 collected at a training camp in Novorgorsk on 31 July 2013 (which was again reported as negative in ADAMS) had been found to contain “*methasterone high ... urgent for the debriefing in the evening*”.

- (c) The Athlete’s inclusion in the London and Moscow Washout Schedules demonstrated that she was a protected (or “SAVED”) athlete under the schemes used at the Moscow laboratory to orchestrate doping programs in 2012-2013, as were a number of other Russian athletes whose samples were found positive on retesting by the IOC after the London Olympics.
- (d) The authenticity and probative value of these documents as part of the EDP was established to a standard of comfortable satisfaction by the examination of the internal metadata by Mr Sheldon as expert to the effect that they were contemporaneous, the evidence of Dr Rodchenkov, and the context derived from the McLaren Reports and the recent history of doping in Russian sport.
- (e) The Athlete should be sanctioned with the maximum period of ineligibility because she committed multiple ADRVs over several years as part of a sophisticated scheme to maximise the benefits and concealment of doping.

30. The Claimants requested by way of final relief that:

- (a) The Athlete be found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the IAAF Rules.
- (b) A period of ineligibility of four years be imposed upon the Athlete, commencing on the date of the (final) CAS Award (with any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until that date to be credited against the total period of ineligibility to be served);
- (c) All competitive results obtained by the Athlete from 17 July 2012 to the commencement of any period of provisional suspension or ineligibility be disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money); and
- (d) The First Respondent or alternatively the Respondents jointly and severally, bear entirely the arbitration costs and be ordered to contribute to the IAAF’s legal and other costs.

B. The First Respondent

31. RUSAF took no part in the proceedings following its letter dated 16 July 2018 referred to above

C. The Second Respondent's submissions

32. The Athlete's main submissions included the following:
- (a) She maintained that she had never used any prohibited substances and had been frequently tested and always found negative as recorded on ADAMS, including official testing around the Moscow World Championships on 24 and 31 July and 14 August 2013, and retesting following the London Olympics.
 - (b) She disputed the authenticity of the documents relied on against her from the EDP, in particular because their source was allegedly Dr Rodchenkov and the internal metadata could have been manipulated to show a false history of creation and editing, by reference to Mr Rundt and Ms Wilson as experts, who both stated that it was not forensically viable and reliable evidence.
 - (c) She challenged the probative value of those documents, since neither the documents' creator(s), those who allegedly collected, tested and/or tampered with her samples and results, nor the primary records of those processes or any statement as to their chain of custody, had been identified and adduced in evidence, and Dr Rodchenkov had no first-hand knowledge of the same.
 - (d) She contended that (i) Dr Rodchenkov was a wholly unreliable witness, whose testimony constituted hearsay at best and was contradicted by the evidence of former colleagues in other proceedings, and that (ii) the McLaren Reports were fundamentally flawed, subjective, inconsistent and superficial, lacked independence and impartiality, and used highly questionable, unidentified and inadmissible sources.
 - (e) She also alleged that (i) the IAAF's reliance on evidence relating to alleged wrongdoing by other Russian athletes was contrary to principle and to individual responsibility and (ii) other sports federations had investigated the facts in relation to other Russian athletes and concluded that evidence from Dr Rodchenkov and in the McLaren Reports was insufficient to prove wrongdoing by them, citing, among other things, various cases in which alleged ADRVs by other athletes, according to the McLaren Reports, had been dismissed
 - (f) In more detail, she pointed specifically to the absence of any records or better evidence (i) as to the collection and analysis of her alleged samples including sample 2729632; (ii) regarding the origin and truthfulness of the e-mail of 2 August 2013 (iii) that she took Dr Rodchenkov's alleged "Duchess Cocktail" the subject of the London Washout Schedules, but of which Methasterone was not part (iv) explaining different versions of and inconsistencies or other mistakes in the Washout Schedules and why two samples were

referred to for 24 and 31 July 2013; and (v) contradicting the fact that her official samples at the London Olympics, as retested, and those dated 24 and 31 July and 14 August 2013, were all negative.

(g) She submitted that the IAAF had failed properly to investigate or discharge the heavy burden of proof and that the period of ineligibility which it sought was grossly disproportionate, denying in any event the aggravating circumstances which it claimed.

33. The Athlete sought the following by way of final relief, namely that CAS:

- (a) declare that the Athlete is not guilty of any anti-doping violation under Rule 32.2(b) of the 2012 IAAF Competition Rule;
- (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 obtained by the Athlete from 17 July 2012 through to the commencement of any period of provisional suspension or ineligibility; and
- (d) order the IAAF to compensate the Athlete for all costs of the arbitral proceedings, including attorney fees and expenses.

V. JURISDICTION AND APPLICABILITY OF THE APPEAL ARBITRATION PROCEDURE

34. The present jurisdiction of CAS derives from Rule 38.3 of the 2016-2017 IAAF Rules, which provides that:

"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member [...]. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42 [...]."

35. As a consequence of the suspension of its membership, RUSAF was not in a position to conduct within two months or any other reasonable time (and complete, or even to commence) the hearing process for the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the 2016-2017 IAAF Rules. Accordingly, the IAAF was entitled to refer the case of the Athlete to CAS to be heard in the first instance by a Sole Arbitrator (as it was in many previous cases, such as CAS 2016/O/4463 and CAS 2017/A/4949).

36. The jurisdiction of CAS in this matter has not been contested by the Respondents. On the contrary, it was confirmed by the signature of the Order of Procedure by all parties.
37. It follows that the CAS has jurisdiction to adjudicate and decide the present matter and that the present case will be dealt with in accordance with the appeals arbitration rules, although it is a first-instance matter assigned to the CAS Ordinary Arbitration Division.

VI. ADMISSIBILITY

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

VII. APPLICABLE LAW

39. Under Article R58 of the Code, the Sole Arbitrator must decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled (or according to the rules of law, the application of which the Sole Arbitrator deems appropriate, giving reasons for his decision).
40. Under Rule 21.3 of the IAAF Anti-Doping Rules in force from 6 March 2018, 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.
41. The IAAF Rules, binding on the Respondents as aforesaid, also include the following:
- (a) Rule 30.1 - "*... the Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation*".
 - (b) Rule 42.23 - "*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 Regulations)*".
 - (c) Rule 42.24 - "*In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise*".
42. Thus the rules applicable substantively in this case are the 2012-2013 IAAF Competition Rules (in force from 1 November 2011); and procedurally, the 2016-2017 IAAF Competition Rules (which were in force from 1 November 2015). If and to the extent that those IAAF Rules do not deal with a relevant issue, Monegasque law applies as the law of the place where the IAAF has its registered seat and as chosen in its Rules.

VIII. MERITS

A. The alleged ADRVs

(i) The IAAF Rules

43. Rule 32.2(b) of those IAAF Rules forbids the “Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”. In its essential parts, this provision reads as follows:

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

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

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

“Use” has further been defined as “[t]he utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method”.

44. Burdens and Standards of Proof are addressed under Rules 33.1 and 33.2 of the 2016-2017 IAAF Rules, which in the essential parts, stipulate the following:

“Burdens and Standards of Proof

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

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

45. Under Rule 33.3 of the 2016-2017 IAAF Rules, facts related to an ADRV 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 and analytical information.
46. Rule 33.1, 33.2 and 33.3 of the 2012-2013 IAAF Rules are practically identical with the 2016-2017 IAAF Rules.

(ii) Discussion

47. In the present case, having carefully considered all the evidence and submissions from the parties, the Sole Arbitrator finds himself comfortably satisfied that the Athlete committed the ADRVs alleged, largely because, after having heard the experts, he considers that the key documents relied upon against her are authentic and are sufficiently probative in the circumstances of this case.
48. As regards authenticity, the Sole Arbitrator prefers Mr Sheldon's specific and practical evidence to the theoretical criticisms of it by Mr Rundt and Ms Wilson. Mr Sheldon examined the internal metadata of documents from the EDP and tested all available software to decide that none of it could falsely manipulate the creation and editing dates in the forensic copies of Dr Rodchenkov's hard-drive, without leaving obvious traces (which were not present).
49. Neither Mr Rundt nor Ms Wilson carried out this exercise. That left Mr Rundt to propound two alternatives - that special software, unknown to the experts, could have been specially created for that purpose or that the computer's clock was reset on each occasion to the original time of each document so as to change it without trace - neither of which was plausible in the absence of some understandable description of such possible software and/or case of thousands of documents concerned.
50. As regards probative value, the documents relied on against the Athlete – the relevant London Washout Schedule, Moscow Washout Schedules and email of 2 August 2013 – speak clearly and loudly if authentic, as further corroborated by the meta-data of the relevant native files, which were at the Sole Arbitrator's disposal:
51. The properties of the e-mail dated 2 August 2013 indicate that it was indeed received on that date and as regards the London and Moscow Washout Schedules respectively:
- (a) according to its metadata, the Excel file (EDP0019) containing information on the Athlete's sample 2729632 collected on 17 July 2012, was created on 19 July 2012 and last modified on the same date. The author and the last modifier of the file was Mr Sobolevsky, who worked in Dr Rodchenkov's team in the Moscow Laboratory; and
 - (b) according to the metadata of the Excel file containing the Moscow Washout schedule primarily invoked by the IAAF (EDP0028), had been created on 4 July 2013 and last modified on 21 August 2013. The author and the last modifier of the file was also Mr Sobolevsky.
52. The negative theories suggested on behalf of the Athlete – essentially, that Dr Rodchenkov set out at some stage to “frame” all the Russian athletes and officials referred to in the EDP and has successfully hoodwinked all the investigators to date – stretch credibility, not least given the detail involved. Whilst ascribing ill motives to Dr Rodchenkov and stressing various adverse findings against him, and gaps and inconsistencies in his accounts, the Athlete did not present any satisfactory theory (despite the technical assistance of her experts) as to how he

could have and did fabricate the massive amount of material in the EDP demonstrating the doping programmes in which the Athlete participated.

53. The presence of other “date-stamps” referable to some versions of some documents, does not disprove the authenticity of the dating on internal metadata. And whilst it is of course appreciated that the Washout Schedules are second- or third-hand summaries, and that the primary documents and the individuals involved in the process before the schedules were compiled would be better evidence, the absence of the same is readily understandable (as are the Athlete’s blanket denials and her negative results in ADAMS and indeed on retesting) given the nature of the doping programmes concerned.
54. That is far from entirely dismissing the scepticism on behalf of the Athlete as to (a) the reliability of Dr Rodchenkov as a witness and (b) the contextual support sought by the IAAF from the widespread allegations in the McLaren Reports and regarding other Russian athletes and officials, including the Athlete’s coach. On their own, without the key documents against the Athlete, the Sole Arbitrator would not accept any of these alone as sufficient to prove the IAAF’s case.
55. However the context – the repeated, comprehensive findings of systemic doping practices in Russia laid out in numerous investigations (including the Independent ADA Commission and the Schmidt report as well as McLaren’s) and CAS awards – do, in the Sole Arbitrator’s opinion, lend some degree of support for the key evidence in the authentic and probative documents which identify the Athlete, for which there is no countervailing explanation of real persuasive force. The Sole Arbitrator rejects the Athlete’s submission, as he understood it, that every element of proof must on its own surmount the standard of comfortable satisfaction which is required from the Claimant’s case as a whole.
56. That various samples from the Athlete were reported as negative (including ADAMS entries) was the purpose of the doping scheme in which she was involved, and that other athletes on the schedules were found positive on occasion, are in no way inconsistent with the extent to which the Athlete was “protected”.
57. The Sole Arbitrator also does not accept the Athlete’s point that methasterone was not part of the Duchess Cocktail, since contrary to the Athlete’s allegations, the IAAF did not base its case on any alleged use of the Duchess Cocktail: neither the London and Moscow Washout Schedules were limited to athletes using the Duchess Cocktail.
58. Nor is it accepted that the existence of different Moscow Washout Schedules, that they contained discrepancies and that sometimes the dates in the file names preceded the dates of the samples referred to in the tables, significantly undermine their probative value for the present purpose. Many changes appear to be updates in summer 2013 by the addition of new information, to reflect the progress of the washout testing programme and in addition to modify the layout.
59. The discrepancies between different versions of the schedules do not connote pure fiction or general unreliability; where dating in file names differs from the date of sample collection, it

is plausible that file names were updated at times different from the changes to content. These minor anomalies are not incapable of authentic explanation and do not suffice to render this evidence unreliable as against the Athlete.

60. For her part, the Athlete's case as regards her testing and responsibility was wholly unconvincing. Her manner of denying any violation was, sadly, no more than to be expected in the circumstances of this case and she called no other factual evidence.
61. In the judgment of the Sole Arbitrator, the Athlete's violations are clearly established, despite her very extensive challenge to each and every separate element of proof against her. Looking at the totality of the matter, there might be some analogy with the logic and common sense of English law, which has recognised for at least 150 years that "*Circumstantial evidence might be compared to a rope comprised of several cords: one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength*".
62. The Sole Arbitrator accordingly finds that the evidence as a whole constitutes reliable means for the determination on which he is comfortably satisfied, that the Athlete indeed breached Rule 32.2(b) of the IAAF Rules by using prohibited anabolic steroids in programs during the course of 2012 and 2013.

B. Sanctions

(i) The IAAF Rules

63. Under Rule 40.2 of the 2012 IAAF Rules, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of ineligibility (Rules 40.4 and 40.5 of the 2012 IAAF Rules) or for increasing it (Rule 40.6 of the 2012 IAAF Rules) are met.
64. Rule 40.6 provides that "*if it is established in an individual case involving an anti-doping rule violation ... that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation*".
65. Examples of aggravating circumstances stated at Rule 40.6(a), include that "*the Athlete ... committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise ...; the Athlete used ... multiple Prohibited Substances ... or used ... a Prohibited Substance ... 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 ... engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation*".
66. Rule 40.7(d)(i) of the 2012-2013 IAAF Rules expressly sets out that "*the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)*".

67. Rule 40.8 provides that:

“In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other 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 of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money”.

68. Rule 40.10 provides among other things that:

“Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served”.

(ii) Discussion

69. The IAAF has not imposed any provisional suspension upon the Athlete and the period of ineligibility should therefore start on the date of this award. As it happens, the Athlete stated at the hearing that she retired from competing in late 2017. Accordingly, the imposition of ineligibility may not matter to her as much as disqualification. Similarly in terms of deterrent and punishment effect, the removal of her results may be of greater significance.

70. In that regard, there are many CAS cases, and much learning, on the disqualification of results and the fairness exception. At one end of the range is the single positive finding where the IAAF’s policy in retesting cases to connect the disqualification period to the length of the ban on the basis that if the violation had been detected immediately the athlete would not have been able to compete, and win, during that period (see eg CAS 2016/O/4463, CAS 2017/O/5330 and CAS 2017/O/5332).

71. Elsewhere on the range are cases where an athlete has engaged in doping practices for an extended period of time, over years, where the CAS panels have disqualified all the results of the athlete (see eg CAS 2014/A/3561 & 3614, CAS 2016/O/4464). On the other hand, CAS panels have not infrequently applied the fairness exception and let results remain partly in force, in particular when (a) the disqualification period extends over many years and (b) there is no evidence that the athlete had committed violations over the whole period from the first violation to the commencement of the provisional suspension or ineligibility (see e.g. CAS 2016/O/4481, CAS 2017/O/4980, CAS 2017/O/5039, and CAS 2017/A/5045).

72. CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case. Some CAS panels, in individual cases, have previously considered that it would be unfair to disqualify all results since the doping found, even in the case of a doping scheme. Others have held that it was not appropriate to maintain results on the basis of fairness where the doping was severe, repeated and sophisticated.

(iii) Determination

73. In the present case, the Athlete disputed the alleged violations in every possible way and offered no mitigation or account of how the 2012-13 events may have affected the rest of her competitive career. On the other hand, the aggravating factors, as the Sole Arbitrator finds, are severe: the Athlete used the prohibited substances in the lead-up to the IAAF's biggest competitions over 2 years as part of a lengthy, sophisticated and concealed training scheme involving many others, and providing samples falsely reported as being clean and unofficial samples for washout testing.
74. A judgment must be reached on the scale between two and four years, giving due weight to these aggravating factors but without more specific information from the Athlete.
75. In other cases in which CAS has taken account of significant aggravation under IAAF Rule 40.6 resulted in sanctions as low as 2 years and 9 months (CAS 2013/A/3080) and 3 years (CAS 2014/A/3614).
76. It was also said (in CAS 2017/O/5268) that it may be better to guard against any risk of excessive or harsh punishment and to err if at all on the side of caution in fixing the period of ineligibility.
77. However, in the light of all the circumstances in the present case, there are no grounds to reduce the period of disqualification appropriate, to less than the maximum of 4 years. Pursuant to Rule 40.10 of the 2012 IAAF Rules, that period of ineligibility shall start on the date of this award.
78. As for disqualification of the results, the first evidence in this case of doping by the Athlete is in the London Washout Schedule for 17 July 2012. It is difficult to imagine a case in which the doping involved could be worse in terms of planning, execution and effect. Given that the Athlete has now retired and balancing the effect of disqualification and the effect of ineligibility, the Sole Arbitrator finds that the disqualification of all competitive results over a period of time of four years since 17 July 2012, i.e. the same duration as the period of ineligibility, is proportionate if a just sanction is to be achieved, even if there is no evidence that the Athlete was using a prohibited substance and/or a prohibited method after the Moscow Washout Schedule. A disqualification of results through to the start of the ineligibility period may constitute excessive punishment and would not be fair considering that such period would depend solely on the duration of the anti-doping procedure.
79. Consequently, in accordance with Rule 10.8 of the IAAF ADR, the Sole Arbitrator finds that all competitive results obtained by the Athlete from 17 July 2012 until 16 July 2016 shall be disqualified with all resulting consequences, including the forfeiture of any titles, awards, points, prizes 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 Athletics Federations against All Russia Athletics Federation and Yuliya Kondakova on 26 April 2018 is admissible and is partially upheld.
2. Yuliya Kondakova is found guilty of anti-doping rule violations under Rule 32.2(b) of the IAAF Rules.
3. Yuliya Kondakova is sanctioned with a period of ineligibility of 4 years starting from the date of this Award.
4. All competitive results of Yuliya Kondakova from 17 July 2012 to 16 July 2016 inclusive are disqualified, with all resulting consequences (including forfeiture of medals, points, and prizes).
5. (...).
6. (...).
7. All other and further prayers or requests for relief are dismissed.