



**Arbitration CAS ad hoc Division (OG Rio) 16/012 Ivan Balandin v. Fédération Internationale des Sociétés d’Aviron (FISA) & International Olympic Committee (IOC), award of 6 August 2016 (operative award of 4 August 2016)**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Francisco Müssnich (Brazil); Mrs Rabab Yasseen (Iraq)

*Rowing*

*Decision of an International Federation not to include an athlete in the list of athletes declared eligible to compete at the Olympic Games*

*Nature of the dispute*

*Validity of Point 2 of the IOC Executive Board’s decision*

1. The decision of an International Federation (IF) assessing the individual situation of an athlete to see if he or she could rebut the presumption that he or she has benefited from a State-organised doping scheme designed to protect Russian athletes from ADRVs, is a decision regarding the eligibility of the athlete in question. Indeed, only if the athlete could show he or she had not benefited from such government directed scheme, would he or she be eligible for the Olympic Games.
2. Point 2 of the IOC EB’s decision, according to which *“Entry will be accepted by the IOC only if an athlete is able to provide evidence to the full satisfaction of his or her International Federation (IF) in relation to the following criteria: (i) The IFs, when establishing their pool of eligible Russian athletes, to apply the World Anti-Doping Code and other principles agreed by the Olympic Summit (21 June 2016), (ii) The absence of a positive national anti-doping test cannot be considered sufficient by the IFs, (iii) The IFs should carry out an individual analysis of each athlete’s anti-doping record, taking into account only reliable adequate international tests, and the specificities of the athlete’s sport and its rules, in order to ensure a level playing field, (iv) The IFs to examine the information contained in the IP Report, and for such purpose seek from WADA the names of athletes and National Federations (NFs) implicated. Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games, and (v) The IFs will also have to apply their respective rules in relation to sanctioning of entire NFs”*, deprives the Russian athletes of the presumption of innocence and rather establishes a presumption of guilt, but one that is rebuttable by the athletes on an individual basis. The decision respects IOC’s autonomy and recognises the rights of the athletes to natural justice. Therefore there is no reason to declare it null and void.

## **1 PARTIES**

- 1.1 The Applicant is Mr. Ivan Balandin (the “Athlete”), a rower from Russia.
- 1.2 The First Respondent is the World Rowing Federation (“FISA”), based in Lausanne, Switzerland, the organisation responsible for the sport of rowing.
- 1.3 The Second Respondent is the International Olympic Committee (the “IOC”), the organisation responsible for the Olympic Movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned by the Olympic Charter.
- 1.4 The First Interested Party is the Russian Rowing Federation (the “RRF”) based in Moscow, Russia, the organisation responsible for the sport of rowing in Russia.
- 1.5 The Second Interested Party is the Russian Olympic Committee (the “ROC”) based in Moscow, Russia, the National Olympic Committee for Russia
- 1.6 The Third Interested Party is the World Anti-Doping Agency (“WADA”), based in Montreal, Canada, the organisation responsible for anti-doping in the world.

## **2 FACTS**

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.
- 2.2 On 21 May 2013, an anti-doping test sample was collected from the Athlete and given number 2781155.
- 2.3 On 27 May 2013 at 17:42 (time of Moscow), after the sample had been forensically tested by the Moscow Laboratory, an unnamed individual from that Laboratory reported to Alexey Velikodniy that sample 2781155 showed traces of the prohibited substance GW 1516.
- 2.4 On 28 May 2013 at 13.02 (time of Moscow time), Mr Velikodniy responded to the Moscow Laboratory with the instruction to “SAVE-WARN”.
- 2.5 On 7 June 2013, the sample of the Athlete was reported as “negative” on ADAMS.
- 2.6 Before 18 July 2016, the ROC sent the names of the 26 rowers and two coxswains that were qualified for the 2016 Olympic Games in Rio de Janeiro (the “Rio Games”) to be registered by the IOC. The Athlete’s name was among those notified to the IOC.

- 2.7 On 18 July 2016, WADA’s Independent Person, Mr. Richard McLaren, published on the WADA website its official independent report (the “McLaren Report” or the “IP Report”) describing a fraudulent, government directed scheme to protect Russian athletes from anti-doping rule violations (“ADRVs”), including during the Sochi Winter Games.
- 2.8 On 24 July 2016, the IOC Executive Board issued a decision (the “IOC Decision”) concerning the participation of Russian athletes in the Rio Games. According to this decision the following was stated:  
*“2. Entry will be accepted by the IOC only if an athlete is able to provide evidence to the full satisfaction of his or her International Federation (IF) in relation to the following criteria:  
[...]  
• The IFs should carry out an individual analysis of each athlete’s anti-doping record, taking into account only reliable adequate international tests, and the specificities of the athlete’s sport and its rules, in order to ensure a level playing field.  
• The IFs to examine the information contained in the IP Report, and for such purpose seek from WADA the names of the Athletes and National Federations (NFs) implicated. Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games.  
[...].”*
- 2.9 On 25 July 2016, the FISA Executive Committee met to evaluate the conditions for participation established by the IOC and to comply with the IOC Decision. FISA, in compliance with paragraph 2 of the IOC Decision, received from WADA information from the McLaren Report confirming that 11 rowers had their samples tested and then reviewed by the Russian Deputy Minister of Sport. Six (6) of these were “SAVE” cases, including the Athlete. FISA additionally checked on the ADAMS system and noted that the test was reported as negative. As the date of sample collection was missing (or marked “N/A”) on the information supplied to it, Matthew Smith, from FISA, additionally spoke to Emma Price from UK Anti-Doping, who was reviewing the testing results and procedures at the Moscow Laboratory, who confirmed to him that the sample had been collected on 21 May 2013.
- 2.10 On 27 July 2016, FISA issued the following (the “FISA Statement”):  
*“1) a. FISA has examined the IP Report and the relevant details provided by WADA, and has identified one rower entered by the ROC who is implicated. Consequently and for this reason, this athlete will not be included in the list of rowers declared eligible as it is understood that the IOC will not accept his entry”.*
- 2.11 On 27 July 2016, the RRF was notified of the entire FISA Statement.
- 2.12 On 2 August 2016, the IOC issued a letter to the Summer International Federations, which stated:  
*“...the IOC considers it necessary to clarify the meaning of the notion «implicated» in the EB Decision.*

*The IOC does not consider that each athlete referred to in the McLaren Lists shall be considered per se «implicated». It is for each International Federation to assess, on the basis of the information provided in the McLaren Lists and the Independent Person Report, whether it is satisfied that the athlete in question was «implicated» in the Russian State- controlled doping scheme.*

*To assist the International Federations in assessing each individual case, the IOC wishes to provide some information. In the IOC's opinion, an athlete should not be considered as «implicated» where:*

- *The order was a «quarantine»;*
- *The McLaren List does not refer to a prohibited substance which would have given rise to an anti-doping rule violation; or*
- *The McLaren List does not refer to any prohibited substance with respect to a given sample”.*

### **3 CAS PROCEEDINGS**

3.1 On 2 August 2016 at 13h31 (time of Rio de Janeiro), the Athlete filed an application with the CAS Ad Hoc Division against the IOC Decision and the FISA Statement.

3.2 On 2 August 2016, the CAS Ad Hoc Division notified the Parties of composition of the Panel:

President: Mr. Mark A. Hovell, United Kingdom

Arbitrators: Mr. Francisco Antunes Maciel Müssnich, Brazil

Mrs. Rabab Yasseen, Iraq

3.3 In the same communication, the Panel directed the Respondents to provide their replies to the Athlete's application and the Interested Parties their amicus curiae before 3 August 2016 at 10.30 (time of Rio de Janeiro). Moreover, such communication called the parties to a hearing on 3 August 2016 at 11.00 (time of Rio de Janeiro).

3.4 On 3 August 2016 at 09.23 (time of Rio de Janeiro), FISA filed its Answer.

3.5 On 3 August 2016 at 09.38 (time of Rio de Janeiro), the IOC filed its Answer.

3.6 On 3 August 2016 at 10h03 (time of Rio de Janeiro), WADA filed its amicus curiae.

3.7 On 3 August 2016 at 10h20 (time of Rio de Janeiro), Mr. McLaren filed his amicus curiae.

3.8 On 3 August 2016, at 10h30 (time of Rio de Janeiro), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr Brent J. Nowicki, Counsel to the CAS, and the following persons also attended the hearing: for the Athlete, Ms Darina Nikitina and Yury Zaytsev, Counsel (both by telephone); for FISA, Mr Jean-Christophe Rolland, FISA

President and Mr Matt Smith, FISA General Secretary (in-person); for the IOC, Messrs Howard Stupp, Director Legal Affairs, François Carrard and Nicolas Zbinden, Counsel (in-person); and for WADA, Mr Ross Wenzel, Counsel (in person).

#### **4 PARTIES' SUBMISSIONS**

4.1 The Parties' submissions and arguments shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered.

##### **a. Applicant's Requests for Relief**

4.2 The Athlete's requests for relief are as follows:

- "1) *The Application filed by the Applicant is accepted;*
- 2) *The IOC Challenged decision from 24 July 2016, in the following part "Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games", is null and void;*
- 3) *The FISA Challenged decision from 25 July 2016 in respect to the Applicant is nulled and void;*
- 4) *The Applicant is entered for participation at the Rio 2016 Olympic regatta subject to be was qualified to the Rio 2016 Olympic games and included into the list of participants by the ROC by the deadline of 18 July 2016;*
- 5) *The FISA is obliged to allow the Applicant to participate at the Rio 2016 Olympic regatta;*
- 6) *IOC shall accept entry of the Applicant in 2016 Rio Olympic Games;*
- 7) *The FISA shall bear all legal and other costs of the Applicant at the amount determined by the CAS Panel".*

##### **b. FISA's Requests for Relief**

4.3 FISA's requests for relief are as follows:

*"FISA asks the Ad Hoc panel to dismiss this appeal".*

##### **c. IOC's Requests for Relief**

4.4 The IOC's requests for relief are as follows:

*"1. Dismiss the application of Ivan Balandin".*

#### **5 JURISDICTION AND ADMISSIBILITY**

5.1 Article 61.2 of the Olympic Charter provides as follows:

*“61 Dispute Resolution*

*[...]*

*2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration”.*

5.2 In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. The jurisdiction of the CAS Ad Hoc Division was not contested in the written submissions and was expressly confirmed by all parties at the hearing.

5.3 Article 1 of the CAS Arbitration Rules for the Olympic Games (the “CAS Ad Hoc Rules”) provides as follows:

*“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)*

*The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.*

*In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective”.*

5.4 At the outset of the hearing, the Panel discussed with the Parties the fact that the IOC Decision and the FISA Statement were both rendered before the CAS Ad Hoc “window” opened, 10 days before the Opening Ceremony of the Rio Games. The Parties acknowledged that while theoretically there may be issues as to when the “dispute” arose, all Parties expressly waived any such issues and expressly confirmed that they wanted the Panel to treat the dispute as admissible and to proceed to render this Award.

## **6 APPLICABLE LAW**

6.1 Under Article 17 of the CAS Ad Hoc Rules, the Panel must decide the dispute *“pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate”.*

6.2 The Parties also referred in their submission to Swiss law regarding the legal position of a Swiss Association.

6.3 The Panel hereby confirms that these proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport (“ICAS”) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS Ad Hoc Rules and as the result of the choice

of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of arbitrators, pursuant to Article 7 of the CAS Ad Hoc Rules.

- 6.4 According to Article 16 of the CAS Ad Hoc Rules, the Panel has “*full power to establish the facts on which the application is based*”.

## 7 DISCUSSION

### *a. Position of the Athlete*

- 7.1 In summary, the Athlete finds that the IOC Decision and the FISA Statement, which it also regards as a decision, are illegal and should be recognised as “null and void”.
- 7.2 These bodies have assumed an ADRV. If this is the case, then the dispute is an anti-doping dispute and should have followed the applicable Anti-Doping Regulations, which FISA has not done. Additionally, no reliance can be made on the McLaren report as evidence, as it is not complete, it has secret parts that were not shared with or available to the Athlete and there was no date of the sample taking in the information that Mr McLaren provided. There had also been breaches of procedural fairness by the Respondents, including a breach of their duty of good faith and providing the Athlete with a right to be heard.

### *b. Position of FISA*

- 7.3 FISA submitted that it should not be a Respondent in this matter. The FISA Statement does not represent a decision at all, as it did not concern the Athlete. Rather, FISA noted the clear wording of paragraph 2 of the IOC Decision:

*“Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games”.*

- 7.4 FISA applied the criterion and was satisfied that the Athlete was “clearly implicated” by the McLaren Report and was therefore excluded from the Rio Games.

### *c. Position of the IOC*

- 7.5 In its Reply, the IOC first recalled the principles of autonomy applicable to any Swiss association such as the IOC which provided it with the freedom of association and the right to produce the IOC Decision. It explained the reasoning behind and the extraordinary circumstances that resulted in the IOC Decision and drew parallels with the position adopted by the IAAF.
- 7.6 Finally, it submitted that the Athlete had clearly been “implicated” by the McLaren Report and by Mr McLaren’s own amicus curiae. The athlete was “saved”; the substance was prohibited at all times and would result in an ADRV if found in his sample, which Mr McLaren was satisfied,

beyond a reasonable doubt, that it was. Finally, the IOC explained why the matter at hand was not an anti-doping one, as the Athlete attempted to portray it as.

**d. *Comments from WADA***

7.7 WADA assisted the Panel by providing an explanation of the “*disappearing positives methodology*” (“DPM”). Mr McLaren noted that samples from athletes were initially screened analytically, which would reveal if the A sample was likely to reveal an ADRV. No test is 100% accurate at this stage, but this screening is reliable. If a likely positive result was found then the laboratory would, through RUSADA communicating through a liaison, communicate this fact and the identity of the athlete to the Deputy Minister of Sport. He, in turn, would issue a “save” or “quarantine” order back down the line to the laboratory. If the order was “save” the laboratory would record the test result as negative in ADAMS and manipulate their own non-auditable version of their Laboratory Information Management System.

7.8 WADA also provided their view that the Athlete’s submission that the matter at hand is a doping matter is wide of the mark. The matter at hand is an eligibility issue.

**e. *Comments from ROC***

7.9 The ROC was not able to make any conclusion whether the exclusion of the Athlete from the Rio Games is legally valid or not.

**f. *Considerations by the Panel***

7.10 The Panel was grateful to the counsel of the Parties and WADA for attending the hearing at short notice and for their written submissions. This better enabled the Panel to understand the context in which and the circumstances that existed at the time the IOC Decision was taken.

7.11 The issues before the Panel are as follows:

1. What is the nature of the dispute before the Panel?
2. Is the IOC Decision “null & void”?
3. Do any of the alleged procedural irregularities assist the Athlete?
4. Were FISA correct in declaring the Athlete had been “implicated”?

1) *Nature of the dispute*

7.12 The Athlete submits that this dispute is an anti-doping procedure and should follow the appropriate rules and any determination of his guilt or otherwise should be carried out by the appropriate anti-doping body, not by FISA’s executive board.



- 7.13 WADA sought to clarify its position and stated that the Athlete may yet face proceedings relating to an ADRV, however, the nature of these could yet to be determined. The samples may have been destroyed, and as such the Athlete may not face a use violation, but instead may face a tampering violation or the like. Any such proceedings would be dealt with in accordance with the applicable anti-doping regulations and by the appropriate anti-doping body. The matter at hand concerns eligibility for the Rio Games.
- 7.14 The Panel agrees that the matter at hand is eligibility. The IOC Decision, as mentioned below, was borne out of the need to respond to the government directed scheme to protect Russian athletes from ADRVs. All Russian athletes (putting aside those with a prior ADRV sanction, which was the subject of *CAS OG 16/013*) were to be analysed individually to see if they could rebut the presumption that they had benefited from this government scheme. Put simply, only if the Athlete could show he had not benefited, then he would be eligible for the Rio Games. There was an additional hurdle for those implicated in the McLaren Report, which was clarified by the IOC's letter of 2 August 2016, as set out above.
- 7.15 The dispute at hand concerns the Athlete's eligibility for the Rio Games alone. The Panel must be satisfied that the IOC Decision is legal; then look at how it was applied by FISA, considering, in principle, whether the Athlete was "implicated" in the scheme and then whether he "benefited" from it.
- 2) *Paragraph 2 of the IOC Decision*
- 7.16 The Panel noted that the timing of the McLaren Report put the IOC in an invidious position, so close to the Rio Games. As the IOC submitted, the McLaren Report revealed a State-organised doping scheme in Russia, involving the Deputy Minister of Sport, sample swapping during the Winter Olympic Games Sochi 2014 and falsification of analysis by the Moscow laboratory on the orders of the Deputy Minister of Sport.
- 7.17 The IOC faced calls from a significant part of the anti-doping community to ban all the ROC and all its athletes of any sport from competing at the Rio Games. The IOC decided not to do so. Instead, the Executive Board of the IOC decided to strike a balance between the collective responsibility applying to Russian athletes in view of these exceptional circumstances and the right of each athlete to have his/her case individually considered. The IOC Decision stated:  
*"Under these exceptional circumstances, Russian athletes in any of the 28 Olympic summer sports have to assume the consequences of what amounts to a collective responsibility in order to protect the credibility of the Olympic competitions, and the "presumption of innocence" cannot be applied to them. On the other hand, according to the rules of natural justice, individual justice, to which every human being is entitled, has to be applied. This means that each affected athlete must be given the opportunity to rebut the applicability of the collective responsibility in his or her individual case".*
- 7.18 The IOC Decision went on to establish the criteria that any individual Russian athlete would need to meet in order to be eligible for the Rio Games. The criteria that is relevant for this matter was contained in paragraph 2 of the IOC Decision.

- 7.19 The Panel notes that for any athlete that has attained the necessary sporting levels required for the Rio Games, he or she must first be deemed eligible to compete by their sport's International Federation; secondly, their country's Olympic Committee must then determine which eligible athletes to enter into the Games; and finally, the IOC will accept such athletes or not, pursuant to Rule 44.3 of the Olympic Charter. The criteria set at paragraph 2 of the IOC Decision were directed at the International Federations; in the case at hand, FISA.
- 7.20 The Panel has no doubts at all that the IOC acted in good faith and with the best of intentions when issuing such decision. The IOC confirmed that the aim of these criteria was to give an opportunity to those Russian athletes who were not implicated in the State-organised scheme to participate in the Rio Games.
- 7.21 The IOC noted that the IAAF had "*acted in an identical manner*" with respect to the Russian track and field athletes. The IAAF suspended the Russian Athletics Federation, which resulted in the IAAF Competition Rules being amended to include a new Rule 22.1 (A) on the eligibility of individual athletes.
- 7.22 The IOC submitted that the criteria established by the IAAF was stricter than its own, as only 1 athlete had successfully been deemed eligible to participate at the Rio Games. The IOC also noted that the IAAF rules had been supported by a recent CAS decision.
- 7.23 This Panel notes all the IOC's submissions regarding its ability as a Swiss association to have significant autonomy to establish its own rules, including those in the IOC Decision, which it further notes has been accepted practically on a unanimous basis by its members.
- 7.24 Having noted the background to the IOC Decision, the Panel now examines its contents. The IOC Decision acts to deprive the Russian athletes of the presumption of innocence and rather establishes a presumption of guilt, but one that is rebuttable by the athletes on an individual basis. The Panel notes in particular the clear and correct references to the rules of natural justice. These rules act to limit the autonomy of the IOC, but such limitation was voluntarily adopted by the IOC itself. Paragraph 2 follows the introductory wording in the IOC Decision and establishes 5 bullet points of conditions that must be fulfilled, which, in the opinion of the Panel, further recognise the right of the individual athletes to natural justice. As such, the Panel sees no reason to declare paragraph 2 of the IOC Decision, which is the part challenged by the athlete in this procedure, null and void. It respects the IOC's autonomy and that the IOC voluntarily limited that by incorporating the rules of natural justice and directing the International Federations to carry out an individual analysis of each athlete, which includes looking at the testing history of each, where such tests took place, whether Mr McLaren had noted anything in his Report, whether the athlete had been implicated as being involved in and/or benefiting from such state-sponsored scheme.

3) *No breach of good faith, procedural fairness, venire contra factum proprium or the right to be heard*

7.25 The Athlete submitted that it constitutes a breach of *venire contra factum proprium* if the qualification process was changed with retrospective effect. However, as has been determined in *CAS OG 16/011*, this is not the case here:

*“FISA did not change its eligibility criteria. Instead, it was the IOC (that governs and administers the Rio Olympic Games) who imposed the additional eligibility criteria specifically on Russian athletes. FISA only implemented and applied these criteria to its Russian athletes. This neither constitutes a breach of the principle of venire factum proprium nor a breach of good faith. This is all the more true, since the Athletes specifically and repeatedly stated that they do not wish to challenge the eligibility criteria established by the IOC Executive Board in its decision dated 24 July 2016. The Athletes’ reference to CAS 98/200, according to which it constitutes – allegedly – a violation of procedural fairness, if a rule is adopted too late, is of no avail here. The jurisprudence refers to rules and regulations and not to the taking of evidence, i.e. assessing the testing record of the respective athletes.*

7.26 Finally, the Panel notes that this is a *de novo* procedure and that consequently, procedural mistakes that might have occurred at a prior instance are cured by the CAS. The Athlete confirmed that his right to be heard and treated equally with the Respondents had been satisfied with the hearing in this matter.

4) *Paragraph 2 implication?*

7.27 The Panel now turns to the position of FISA and its application of the eligibility criteria set out in paragraph 2. As stated above, FISA’s mission, as set out in the fourth bullet point of paragraph 2, was to check to see if the athlete was “implicated”; then, pursuant to the IOC letter of 2 August 2016, it was recognised that some athletes may be implicated, but did not perhaps benefit from the scheme. For example, if the substance in their sample was not prohibited, or would not lead to an ADRV or if the instruction was “quarantine” (as those athletes were then processed as normal.)

7.28 In the Athlete’s case, he did not deny that he was tested and that a sample was taken. Rather, he stated that as Mr McLaren put “n/a” in the column for the sample date, this nullified that information. FISA noted that the sample date was missing, but took the necessary steps to establish this date by calling UKAD.

7.29 Additionally, Mr McLaren, in his *amicus curiae*, while not providing the emails on grounds of confidentiality, revealed to the Panel the exact date and times of the message from the Moscow Laboratory that the screen of the Athlete’s A sample revealed positive for the prohibited substance GW 1516 and the response from the Deputy Minister to change the positive into a negative, following the DPM. While these additional details were not before FISA (primarily due to the lack of time), they have been considered by the Panel in this *de novo* procedure. However, even without the details of the emails, the Panel is satisfied that the information provided to FISA and the additional checks it took with UKAD, were sufficient to show the Athlete was “implicated” in this scheme.

7.30 Now considering whether he benefited, the Panel notes that the substance GW 1516 is a metabolic modulator and a non-specified substance and is prohibited at all times (without a threshold). Further, the instruction from the Deputy Minister was “save”. If it had been “quarantine”, then the Athlete would have been processed under the anti-doping regulations. Does this mean he would have received a ban and as such, the avoiding of this ban would be the benefit? To take that last step FISA (or now the Panel) would have to be convinced applying the “comfortable satisfaction” threshold. While there were no submissions from the Athlete as to whether FISA/the Panel would have to be reasonably satisfied, comfortably satisfied or satisfied beyond a reasonable doubt, the Panel determines to put the bar, in the case at hand, above reasonable satisfaction. The Panel is comfortably satisfied.

## 8 CONCLUSION

- 8.1 In view of the above considerations, the Panel is satisfied that the Athlete was implicated in the state-sponsored anti-doping scheme in Russia and by being “saved” he avoided likely doping sanctions and cannot satisfy the IOC’s eligibility criteria to rebut the presumption of guilt and, as such, assumes responsibility for his part in the scheme.
- 8.2 The Athlete’s application filed on 2 August 2016 shall be dismissed.
- 8.3 All other prayers for relief are rejected.

**The ad hoc Division of the Court of Arbitration for Sport renders the following decision:**

The application filed by Ivan Balandin on 2 August 2016 is dismissed.