



Arbitration CAS ad hoc Division (OG Rio) 16/019 Natalia Podolskaya & Alexander Dyachenko v. International Canoe Federation (ICF), award of 8 August 2016 (operative part of 7 August 2016)

Panel: The Hon. Annabelle Bennett (Australia), President; Mr José Juan Pinto (Spain); Mr Jinwon Park (South Korea)

Canoe

Decision of an International Federation to remove athletes from the list of athletes eligible to compete at the Olympic Games

Natural justice and procedural fairness

If athletes have been provided with the opportunity to challenge the decision taken by an International Federation to remove them from the lists of athletes eligible to compete at the Olympic Games and to rebut the evidence against them that led the IF to take the decision, but did not rebut it nor seek time to do so, they have not been denied natural justice or procedural fairness.

1 PARTIES

- 1.1 The First Applicant is Ms. Natalia Podolskaya (“Ms. Podolskaya”), a canoeist from Russia.
- 1.2 The Second Applicant is Mr. Alexander Dyachenko (“Mr. Dyachenko”), a canoeist from Russia.
- 1.3 The Respondent is the International Canoe Federation (“ICF”), based in Lausanne, Switzerland, the organisation responsible for the sport of canoe.
- 1.4 The First Interested Party 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.
- 1.5 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”), the organisation responsible for promoting, coordinating and monitoring the fight against doping, having its headquarters in Montréal, Canada.

- 1.7 The Fourth Interested Party is Professor Richard H. McLaren.
- 1.8 The Fifth Interested Party is the German Olympic Committee (the “DOS”) based in Frankfurt am Main, Germany, the National Olympic Committee of Germany.
- 1.9 The Sixth Interested Party is the Swedish Olympic Committee (the “SOC”) based in Stockholm, Sweden, the National Olympic Committee of Sweden.

2 FACTS

- 2.1 Set out below is 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 18 July 2016, WADA published on its website the report commissioned by WADA from Professor Richard McLaren as the Independent Person (“the IP Report”). The IP Report described a scheme in which the Moscow Laboratory operated, for the protection of doped Russian athletes and within a State-dictated failsafe system, what was described in the IP Report as a Disappearing Positive Methodology, so as to protect Russian athletes from Anti-Doping Rule Violations (ADRVs), including with respect to disqualification during the Sochi Winter Games.
- 2.3 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, after referring to the IP Report, the following was 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 collective responsibility in his or her individual case.

1. *The IOC will not accept entry of any Russian athlete in the Olympic Games Rio 2016 unless such athlete can meet the conditions set out below.*
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, 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).*
 - *The absence of a positive national anti-doping test cannot be considered sufficient by the IFs.*
 - *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 athletes and National Federations (NF's) implicated. Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games.*
 - *The IFs will also have to apply their respective rules in relation to the sanctioning of entire NFs.*
3. *The ROC is not allowed to enter any athlete for the Olympic Games Rio 2016 who has ever been sanctioned for doping, even if he or she has served the sanction.*
 4. *The IOC will accept an entry by the ROC only if the athlete's IF is satisfied that the evidence provided meets conditions 2 and 3 above and if it is upheld by an expert from the CAS list of arbitrators appointed by an ICAS Member, independent from any sports organisation involved in the Olympic Games Rio 2016”.*
- 2.4 On 25 July 2016, the ICF imposed an immediate suspension on five Russian Canoe Sprint athletes, including the Applicants, and removed them from the Games of the XXXI Olympiad in Rio de Janeiro (the Challenged Decision). As explained by the Applicants, the ICF determined that those athletes “were no longer be eligible to take to the start line, or to compete in the OG 2016 since they had been implicated” in the IP Report.
- 2.5 The Russian quotas were reallocated by the ICF.
- 2.6 On 27 July 2016, the Russian Canoe Federation requested Professor McLaren, WADA and RUSADA to provide specific information related to the Applicants but received no response from Professor McLaren or from WADA. RUSADA responded that according to information available, the samples provided by the Applicants between 2010 and 2016 did not contain any prohibited substances.
- 2.7 On 27 July 2016, the first Applicant and on 28 July 2016, the second Applicant, requested Professor McLaren to provide specific pieces of evidence related to them. Professor McLaren responded that he had provided all of the information to WADA and advised the Applicants to obtain the relevant information from the relevant International Federation, here the ICF.
- 2.8 On 2 August 2016 WADA informed the first Applicant that all relevant information was referred to the ICF.
- 2.9 On 2 August 2016 WADA informed the first Applicant that all relevant information was referred to the ICF.
- 2.10 On 2 August 2016, the IOC sent a communication to the International Federations, which relevant part reads as follows:
- “In view of the recent appeals filed by Russian Athletes with CAS, 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 ant-doping rule violation or;*
- *The McLaren List does not refer to any prohibited substance with respect to a given sample".*

2.11 On 5 August 2016, pursuant to directions made by the Ad Hoc Division (see 3. below) Professor McLaren submitted an affidavit in this proceeding. It is convenient to set out those matters, as relevant to the Applicants, here:

- In the IP Report, he had found beyond a reasonable doubt that that:
 1. *The Moscow Laboratory operated, for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*
 2. *The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian Athletes to compete at the Games.*
 3. *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 Moscow and Sochi Laboratories.*
- The focus of his investigations to date had not been to establish ADRV cases against individual athletes or to conduct a Results Management investigation with respect to individual Russian athletes.
- He had, however, reviewed "*a considerable amount of reliable evidence, which clearly implicate individual athletes in the State-dictated doping cover up program*" described in the McLaren Report.
- As to the Applicants, Professor McLaren stated:

"In connection with Ms Natalia Podolskaya, I have retrieved from the IP Investigative database and reviewed electronic and other evidence from 31 July 2013 and 1 August 2013. The metadata corresponding to the electronic evidence has been forensically tested and confirms that the evidence was created contemporaneously with the indicated dates. The electronic evidence reveals that on 31 July 2013 at 00:50 hours, in contravention of the International Standard for Laboratories, the Moscow Laboratory reported to email address av@sochi2014.com that sample member 2780289, belonging to a female canoe athlete taken at the Russian Championships in Moscow, was suspected for EPO and further inquired what should be done.

On 1 August 2013 Alexey Velikodniy communicated back to Laboratory that the sample number 2780289 belonged to Ms. Natalia Podolskaya and instructed the Laboratory to "SAVE".

In connection with Mr. Alexander Dyachenko I have retrieved from the IP Investigative Database and reviewed electronic evidence from 5, 6 and 7 August 2014. The metadata corresponding to this electronic evidence was created contemporaneously with the indicated dates. The electronic evidence reveals that on 5 August 2014 at 12:09 hours, in contravention of the International Standard Laboratories, the Moscow Laboratory reported to Alexey Velikodny that pre-departure sample number 2917734, collected at a Training Camp on 3 August 2014, contained a lot of trenbolone and a little methenolone. Alexey Velikodny's response to the laboratory on 6 August 2014 at 11:26 was that sample number 2917734 from 3 August 2014 pre-departure test belonging to Mr Alexander Dyachenko, and on instruction from "IIR", should be a "SAVE". In Dr. Grigory Rodchenkov's testimony to the IP team, he confirmed that IIR stood for the initials of Irina Iegorovna Rodionova. The electronic evidence also contains a communication from Irina Rodionova to Alexey Velikodny dated 7 August 2014 in which she identifies sample number 2917734 as a "SAVE". Mr Dyachenko's sample was one of several Canoe-Sprint pre-departure samples forwarded by the Laboratory to Alexey Velikodny for a decision, all of which came back "SAVE".

For both Ms. Natalia Podolskaya and Alexander Dyachenko, the "SAVE" instruction signalled to the Laboratory that no further analytical bench work was to be done on the samples and the Laboratory filed a negative ADAMS report for each athlete. These communications are consistent with the Disappearing Positive Methodology as described in Chapter 3 of the IP Report".

3 CAS PROCEEDINGS

- 3.1 On 4 August 2016 at 8.30 (time of Rio de Janeiro), the Applicants filed a joint application with the CAS Ad Hoc Division against the Challenged Decision.
- 3.2 On the same day, the CAS Ad Hoc Division notified the Parties of composition of the Panel:
President: The Hon. Dr. Annabelle Bennett A.O. S.C., Australia
Arbitrators: Mr. José Juan Pintó, Spain
Mr. Jinwon Park, South Korea
- 3.3 On 4 August 2016, the Panel directed the Respondent to provide its reply to the Applicants' application and the Interested Parties their amicus curiae briefs before 6 August 2016 at 13.00 (time of Rio de Janeiro). The Parties and the Interested Parties were also summoned to appear at the hearing scheduled on 6 August 2016 at 17.00 (time of Rio de Janeiro).
- 3.4 On 4 August 2016, Professor Richard H. McLaren filed an affidavit.
- 3.5 On 6 August 2016, the Respondent filed its reply.
- 3.6 On 6 August 2016, the IOC and WADA filed their respective *amicus curiae* briefs.
- 3.7 On 6 August 2016, at 17.00 (time of Rio de Janeiro), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr Antonio de Quesada, Counsel to the CAS, and the following persons also attended the hearing: Mr Artem Patsev and Mr Andrey Mitkov,

counsel for the Applicants; Mr Simon Toulson, Ms Maree Burnett, and Mr John Edwards, representatives of the Respondent; Mr Ross Wenzel, counsel for WADA and Mr André Sabbah, counsel for the IOC.

- 3.8 At the end of the hearing, Panel gave the parties the opportunity to make submissions if they wished in respect of the award issued in the matter *CAS OG 16/012*, the reasons for which were not available at the time of the hearing.

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. Applicants' Requests for Relief

- 4.2 The Applicants' requests for relief are as follows:

- *This application is allowed.*
- *The decision of ICF of 25 July 2016 that declares the Applicants ineligible for participation in the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016, shall be set aside.*
- *The Applicants shall be declared eligible to participate in the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016.*
- *The IOC is obliged to accept the entries of the Applicants submitted by the ROC to compete in the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016.*
- *Alternatively (by way of recommendation), the Applicants' quotas to be allocated through invitation in addition to the quota already re-allocated by the ICF to other NOCs (German and Swedish).*

b. ICF's Requests for Relief

- 4.3 ICF'S requests for relief are as follows:

"The ICF kindly requests that the Ad Hoc CAS panel dismisses this appeal".

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 Games of the XXXI Olympiad in Rio de Janeiro (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 ICF Statement were both rendered before the CAS Ad Hoc “window” opened, 10 days before the Opening Ceremony of the Rio Games. The parties expressly waived any objections to the admissibility of the Application and consented to the Panel hearing the matter and proceeding to render an 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 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.

6.3 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

7.1 The issues as presented in the written arguments and at the hearing can be summarised as follows:

- The ICF’s interpretation of and application of the criteria as set out in the IOC Executive Board decision constitute a new violation and new sanction not envisaged by the WADA Code.
- The ICF failed to provide to the Applicants procedural fairness and denied them natural justice.
- The evidence against the Applicants does not establish that the samples relevant to them contained a prohibited substance.

7.2 The Applicants also sought to raise, in submissions but not by way of evidence, a number of matters including that “strong suspicions do actually exist that the given samples were intentionally contaminated in Moscow laboratory, by Dr Rodchenkov himself or by his subordinates” for their own potential financial benefit by way of payment from the athletes. The Panel rejected such assertions as not supported by any evidence.

7.3 It should also be noted that the Applicants did not submit any evidence to the Panel by way of affidavit with respect to the issue of natural justice, or submit that they were denied procedural fairness by the Panel. Further, as the Panel put to the Applicants at the hearing, they did not seek an adjournment of the hearing in order to obtain evidence, although the events in which the Applicants seek to participate are not imminent and relevant decisions by the ICF as to entry are not to be taken for approximately one week.

a. The IOC criteria

7.4 It should be noted that the Applicants do not challenge the right of the IOC to issue the IOC Executive Board decision. They do not challenge the decision itself or the criteria for entry as set out therein. Rather, they challenge the application by the ICF of the criteria specified in that decision. They submit that the IOC Executive Board has reintroduced Rule 45 of the Olympic Charter (the “Osaka Rule”) which was declared invalid in CAS 2011/O/2422 and CAS 2011/A/2658 and confirmed in CAS 2016/O/4684.

- 7.5 They submit that the present directive from the IOC Executive Board impermissibly constitutes a sanction, being a disciplinary measure taken because of prior behaviour and not a condition of eligibility and that this is contrary to the WADA Code.
- 7.6 Further, they point out that the standard of proof as to an ADRV is greater than the balance of probabilities but less than proof beyond a reasonable doubt and that under the WADA Code, they are entitled to a fair hearing.
- 7.7 The ICF, WADA and the IOC emphasise in the strongest terms the effect of the IP Report and make assertions to the effect that it reveals the worst case of institutional doping in the history of sport. They point out that the objective of knowing that athletes are “clean” is important for sport in general and, in this instance, for canoeing.
- 7.8 The ICF submits that it followed the appropriate course in implementing the matters in the IOC Executive Board Decision and that it acted within its rules, in particular, Rule 48 of the ICF Canoe Sprint Chapter VI Rules, in doing so. Further, the ICF Anti-Doping Rule 3.2 states that *“Facts related to anti-doping rule violations may be established by any reliable means, including admissions”*. The Comment to Article 3.2 refers to credible testimony from third persons and reliable documentary evidence. The ICF considered the IP Report to be credible testimony. The ICF Executive Committee found that it could not accept the entry of the Applicants for the Games of the XXXI Olympiad in Rio de Janeiro
- 7.9 The ICF Rules and the manner in which they were formally implemented by the ICF are not challenged. The Applicants rely on what they assert are breaches by the IOC and the ICF of the WADA Code. However, they have not been declared ineligible to compete for an actual or asserted ADRV. They have been declared ineligible as a consequence of the collective responsibility attributed to Russian athletes as set out by the IOC Executive Board following the IP Report. This is subject to their being able to rebut that presumption.
- 7.10 The Panel is satisfied that the IOC acted in good faith and with the best of intentions and that the criteria for eligibility as set out in that decision, and as subsequently clarified by the IOC, were warranted in light of the IP Report and its timing with respect to the Games of the XXXI Olympiad in Rio de Janeiro.
- 7.11 The Panel finds that the Applicants’ arguments as to the Osaka Rule are misplaced. This is not a case where there has been a sanction for an ADRV and the IOC Executive Board has imposed an additional consequence of that ADRV, or even proceedings for an ADRV. Here, there has been a decision as to eligibility of the athletes. That decision is within the power of the IOC. The circumstances in which the IOC determined that it was necessary to take action and the fact that the IOC acted in good faith in issuing the IOC Executive Board Decision have been referred to in previous decisions of the Ad Hoc Division for the Games of the XXXI Olympiad in Rio de Janeiro and do not need to be repeated.
- 7.12 The Panel notes that this conclusion, that the present matter concerns the eligibility of the athletes and the need for the athlete to overcome “an additional hurdle” to be permitted to

compete, and not an impermissible sanction, is consistent with the conclusion of the Panel in CAS OG 16/012.

- 7.13 The ICF considered the application of the criteria in paragraph 2 of the IOC Executive Board decision in light of the IP Report together with additional information naming those implicated in the IP Report. The Applicants were among five athletes so named. The ICF was entitled to conclude that the Applicants failed to meet the criteria in paragraph 2.
- 7.14 That conclusion has been reinforced by the evidence made available to the Panel by Professor McLaren. That conclusion is justified on the standard of comfortable satisfaction, that is, to a higher standard than the balance of probabilities.

b. Questions of natural justice

- 7.15 The Applicants submit that the IOC and ICF have denied the Applicants natural justice and infringed their personal rights as provided for in the Olympic Charter and as recognised by the IOC Executive Board in its decision and as clarified in the subsequent IOC Statement. They also submit that the ICF failed to provide a proper assessment of the Applicants' cases in order to determine if the criteria as set out in the IOC Executive Board decision applied.
- 7.16 The Applicants note that while the IOC Executive Board stated that Russian athletes must assume the consequences of collective responsibility for the system as described in the IP Report, and that the presumption of innocence cannot be applied to them, each affected athlete is entitled to an opportunity to rebut the applicability of the collective responsibility.
- 7.17 The athletes have been provided with the opportunity, before this Panel, to rebut the evidence against them. They did not provide such evidence, nor seek from the Panel time to do so. The evidence before the ICF and before the Panel justifies the decision that the application of the criteria in paragraph 2 of the IOC Executive Board decision render the Applicants ineligible to compete in the Games of the XXXI Olympiad in Rio de Janeiro.
- 7.18 The Applicants have challenged that decision in the CAS and have been given the opportunity to rebut that evidence. They have not been denied natural justice or procedural fairness.
- 7.19 The Applicants point out that they have never been sanctioned for an ADRV. They rely on the information provided by RUSADA on 5 August 2016 that the B samples of the relevant samples, #2780289 (Ms Podolskaya's) and #2917734 (Mr Dyachenko's) which were allegedly labelled as "SAVE", were discarded. Thus, the Applicants point out, they cannot confirm that the samples were clean and that they did not commit an ADRV.
- 7.20 The Applicants also point out that there is no evidence that they knew of the correspondence as set out by Professor McLaren in his affidavit. They assert, by way of submission, that they would have asked for the B-samples "to prove their innocence". In any event, they rely on the absence of the B-samples and testing thereof to submit that there is no conclusive proof of the presence of the prohibited substances.

- 7.21 They also rely on the samples provided by them which have been tested with negative results. They do not dispute that the substances referred to in Professor McLaren's evidence, EPO, trenbolone and methenolone are substance prohibited at all times under S1a and S2.1 of the WADA prohibited list or that all three substances are non-specified substances that are prohibited at all times and without a threshold.
- 7.22 In the case of Ms Podolskaya, samples were provided on 15 July 2013, 21 July 2013, 25 July 2013 and 15 August 2013. The sample of 25 July 2013 was the sample referred to in Professor McLaren's affidavit.
- 7.23 In the case of Mr Dyachenko, samples were provided on 19 June 2014, 1 July 2014 and 3 August 2014. The sample of 3 August 2014 was the sample referred to in Professor McLaren's affidavit.
- 7.24 The Applicants submit that if they had used prohibited substances, all the tests would have returned positive. However, WADA points out that, due to the nature of the substances concerned and the timing of the provision of the samples, this cannot be concluded.
- 7.25 The ICF says that it cannot draw a conclusion that negative results of the samples in question were correct or that a conclusion could be drawn that the Applicants had not taken prohibited substances, because of the findings of the IP Report.
- 7.26 The Panel cannot conclude, simply from the timing of the results, that the samples in question would have returned negative. The Panel accepts WADA's submission, not contradicted by the Applicants, that there are explanations consistent with the Applicant's assertion but also consistent with the taking of the prohibited substances at the relevant time. Factors referred to by WADA included dosage levels and the time of taking the prohibited substances relative to the time of taking of the samples.
- 7.27 The Applicants rely strongly on the fact that their samples, as tested at the time in 2013, and as reported in ADAMS, were negative for prohibited substances. However, this outcome, following a positive screen, is precisely the consequence of the system described in the IP Report was applied to the Applicants, as set out in the evidence relating specifically to the Applicants as set out in Professor McLaren's affidavit.
- 7.28 Accordingly, the Panel cannot conclude that the Applicants had not taken the prohibited substances which had been disclosed as set out in Professor McLaren's affidavit or that the system had not been applied to render the results of the subsequent testing negative. There is no evidence other than the ADAMS report and the negative testing of the samples to rebut the evidence of Professor McLaren.
- 7.29 The Applicants have not established, on the balance of probabilities, that they were not the beneficiaries of the application of the system as set out in the IP Report and thus "implicated" in the operation of that system.

8 CONCLUSION

- 8.1 It follows that the Applicants have been implicated in the State-sponsored anti-doping scheme as described in the IP Report and do not satisfy the eligibility criteria as set out in the IOC Executive Board Decision.
- 8.2 Accordingly, the application filed on 3 August 2016 should be dismissed.

The ad hoc Division of the Court of Arbitration for Sport rules that:

The application filed on 4 August 2016 by Ms. Natalia Podolskaya and Mr. Alexander Dyachenko is dismissed.