



Arbitration CAS 2017/O/5376 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSA) & Elizaveta Grechishnikova, award of 27 April 2018

Panel: Mrs Raphaëlle Favre Schnyder (Switzerland), Sole Arbitrator

Athletics (middle & long distance)

Doping (dehydrochlormethyltestosterone, DHCMT)

CAS jurisdiction under Article 38.3 IAAF Rules

Version of the regulations applicable

Determination of the sanction

1. In circumstances where an IAAF member federation is prevented from convening and completing a hearing involving an international-level athlete within the deadline set by Rule 38.3 of the IAAF Competition Rules (the “IAAF Rules”), e.g. because it is suspended from IAAF activities, the IAAF is permitted to refer the matter directly to a sole arbitrator appointed by CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules. Indeed, these proceedings are based on a request for arbitration for the conduct of a first instance hearing and do not involve an appeal against a decision rendered by a sports-related body. In case of an appeal to the CAS it is Rule 38.3 of the IAAF Rules that establishes the jurisdiction of CAS.
2. Pursuant to the legal principle of *tempus regit actum*, the procedural aspects of the proceedings shall be subject to the rules applicable at the time of the proceedings. The substantive matters, that is the athlete’s anti-doping rule violation, shall be subject to the rules in place at the time of the alleged anti-doping rule violation subject to the possible application of the principle of *lex mitior*.
3. As specified in Rule 40.7(d)(i) of the 2009 IAAF Rules, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances. In this respect, a violation involving a non-specified substance revealed by a re-analysis which occurred the same year than another violation already sanctioned, must be considered with the latter for determining the applicable sanction. Thus, absent any mitigating factor submitted by the athlete or his federation, an additional sanction shall be imposed based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time. The fact that the athlete committed multiple anti-doping violations using different methods (anabolic steroids and EPO/blood transfusion), justifies the increase of the period of ineligibility otherwise applicable up to a maximum of four years in application of Rule 40.6 of the 2009 IAAF Rules.

I. BACKGROUND

A. THE PARTIES

1. The International Association of Athletics Federation (“IAAF” or the “Claimant”) is the world governing body for Athletics, recognized as such by the International Olympic Committee. One of its responsibilities is the regulation of track and field, including the running and enforcing of an anti-doping programme consistent with the World Anti-Doping Code (“WADC”). It has its registered seat in Monaco.
2. The Russian Athletics Federation (“RUSA” or the “First Respondent”) is a member, currently suspended, of the IAAF as the national athletics federation for Russia. It has its registered seat in Moscow.
3. Elizaveta Grechishnikova (the “Athlete” or the “Second Respondent”) is a Russian middle-distance runner.
4. The Russian Federation and the Athlete together are referred to as the “Respondents”, the Claimant and the Respondents together as the “Parties”.

B. THE FACTS

5. A summary of the most relevant facts and the background giving rise to the present dispute is based on the Parties’ written submissions and the evidence filed with these submissions. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence are set out, where relevant, in connection with the legal discussion that follows. The Sole Arbitrator refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments, and evidence submitted by the Parties in the present proceedings.
6. On 19 August 2009, the Athlete underwent an in-competition doping control during the 12th IAAF World Championships in Athletics in Berlin. The sample did not reveal the presence of any prohibited substance.
7. Upon request of the IAAF, the sample was re-analysed for long term metabolites of anabolic steroids by a World Anti-Doping Agency (“WADA”) accredited laboratory located in Cologne, Germany (Deutsche Sporthochschule Köln - Institut für Biochemie; hereinafter the “Cologne laboratory”).
8. On 31 March 2017, the Cologne laboratory reported that the Athlete’s A Sample produced an adverse analytical finding for the substance Exogenous AAS/dehydrochlormethyl-testosterone metabolite 4-chloro-17-hydroxymethyl-17-methyl-18-nor-5-androst-13-ene-3-ol (“DHCM”).

9. DHCMT is an exogenous anabolic agent and is a prohibited substance included in section S1.1.a (Anabolic Agents, Anabolic Androgenous Steroids [AAS], Exogenous AAS) of the 2009 WADA Prohibited List.
10. Before the reanalysis of the sample, the Athlete had accepted a sanction for an anti-doping rule violation under rule 32.2(b) of the 2009 IAAF Rules (the “ABP Violation”) and was declared ineligible for a period of two years starting from 16 October 2013. Furthermore, all results as from 18 August 2009 were disqualified in accordance with rules 39, 40.1 and 40.8 2009 of the IAAF Rules.
11. On 4 May 2017, the IAAF notified the Athlete of her adverse analytical finding and the alleged anti-doping rule violation, informing her, inter alia, about (i) her right to provide the IAAF by 14 May 2017 an explanation for the adverse analytical finding; (ii) her right to request the analysis of his B sample; (iii) her right to attend the opening of the B sample and the subsequent analysis; and (iv) her right to request copies of the Laboratory Documentation Packages for the A and B samples. In this same correspondence, the IAAF also raised the Athletes attention to the fact that a waiver of her right to the B sample Analysis would be deemed an acceptance of the adverse analytical finding in her A sample and that she would not be able to contest these results later in the disciplinary procedure.
12. As no response or explanation had been received from the Athlete within the fixed deadline, the IAAF informed her by letter dated 18 May 2017 that as she had not requested the opening of her B sample she therefore was considered having accepted the A sample’s adverse analytical finding. Further the IAAF informed her as follows:

“Therefore, in accordance with LAAF Rule 38.2, you are provisionally suspended from all competitions and activities in athletics pending resolution of your case. This suspension shall take effect immediately.

Therefore, please note the following:

- (i) *that you are being charged with an anti-doping rule violation under LAAF Rule 32.2 (a) and (b);*
- (ii) *that you are provisionally suspended pending resolution of your case;*
- (iii) *that you have now the right to request a hearing in writing within 14 days (i.e. Thursday 1 June 2017) of this notice in accordance with LAAF Rule 38.2. Should you fail to make such a request in writing, you will be deemed to have waived your right to a hearing and to have accepted that you have committed an anti-doping rule violation under LAAF Rules.*
- (iv) *that the LAAF has taken over responsibility for coordinating the disciplinary proceedings involving Russian international-level athletes and, as a result, your case will be referred to the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) for adjudication. As such, you have until Thursday 1 June 2017 to inform us for which one of the following two procedures you opt:*

(a) Before a Sole Arbitrator of the CAS sitting as a first instance hearing panel pursuant to IAAF Rule 38.3. The case will be prosecuted by the IAAF and the decision will be subject to an appeal to CAS in accordance with IAAF Rule 42; or

(b) Before a CAS Panel as a single hearing, with the agreement of WADA and any other anti-doping organisations with a right of appeal, in accordance with IAAF Rule 38.19. The decision rendered will not be subject to an appeal (save to the Swiss Federal Tribunal).

(v) that you can alternatively decide to forego a hearing by admitting the anti-doping rule violation and accepting a period of ineligibility of four (4) years starting on the date of your provisional suspension (namely on 18.05.17), and including the two (2) years you already served from 16.10.13 to 15.10.15. As such, you would be suspended until 17.05.19, included. If you decide to accept this proposal, please return the attached Acceptance of sanction form signed by no later than **Thursday 1 June 2017**.

Thank you for confirming in return your decision at your earliest convenience and by no later than **the above deadline**. In the absence of an answer from you as to the preferred option, your case will be referred to CAS under IAAF Rule 38.3".

13. The Athlete never responded to this letter.

II. THE ARBITRAL PROCEEDINGS

14. On 26 October 2017, IAAF filed a request for arbitration with the CAS pursuant to the Code of Sports-related Arbitration (the "CAS Code") against the RUSA and the Athlete.
15. In its request for arbitration, IAAF requested that the matter be heard by a sole arbitrator acting as a first instance body, and that, pursuant to Rule 38.3 of the 2016-2017 IAAF Rules, the CAS procedure would be governed by the CAS appeal arbitration rules. In that regard, IAAF indicated that its request for arbitration should be considered its statement of appeal and appeal brief for the purposes of the CAS Code.
16. On 2 November 2017, the CAS Court Office transmitted the request for arbitration to the Respondents and specified that, as requested by the Claimant, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the Appeals Arbitration Division rules. With respect to the Second Respondent, more specifically, the request of arbitration and its exhibits were sent by DHL to the address of the First Respondent for forwarding to the Second Respondent as soon as possible. Furthermore, the CAS Court Office requested the Parties to communicate the personal postal address of the Second Respondent at their earliest convenience. The cover letter accompanying the request for arbitration was also sent by email to the email address (gareeva8383@mail.ru) provided by the IAFF for the Second Respondent.
17. By letter dated 5 January 2018, the CAS Court Office requested the First Respondent's confirmation before 10 January 2018 that the CAS letter of 2 November 2017 had been delivered to the Second Respondent and invited the First Respondent to provide any

document confirming such delivery. The CAS Court Office further invited all Parties to communicate a postal address for the Second Respondent.

18. By email dated 10 January 2017, the IAAF provided the CAS court Office with a postal address for the Athlete.
19. On 12 January 2018, the CAS Court Office informed the Parties that unless it received an objection within 3 days, it will be considered that all agree that CAS future communication for the Athlete be to the indicated e-mail and postal addresses provided by IAAF.
20. By communication of same day, the CAS Court Office informed the Parties, on behalf of the President of the CAS Ordinary Arbitration Division, that the Panel had been constituted as follows: Raphaëlle Favre Schnyder, Sole Arbitrator.
21. On 25 January 2018, the CAS Court Office resent, by e-mail and DHL, a copy of the CAS letter of 2 November 2017, together with its enclosures, and invited the Second Respondent to submit, within 30 days from receipt by DHL, a submission containing her answer. In addition, the CAS Court Office noted that unless the Second Respondent within the 30-day time limit otherwise informed the CAS, it would be considered that she has chosen not to file any written submissions in this matter. Finally, and *inter alia*, the Parties were invited to inform the CAS Court Office by 1 February 2018 whether they wished a hearing to be held in this matter. This letter was duly delivered by DHL to the Second Respondent, who however failed to submit any answer.
22. In an email of 31 January 2018, the Claimant confirmed that it did not consider a hearing necessary in this case.
23. On 8 March 2018, the CAS Court Office issued on behalf of the Sole Arbitrator an order of procedure (the “Order of Procedure”), which was accepted and signed by the IAAF on 8 March 2018. In the Order of Procedure, the Parties were advised that the Sole Arbitrator, deeming herself sufficiently informed, had decided to issue an award without a hearing.
24. On 15 March 2018, the CAS Court Office noted that, having not answered within the time limit, both Respondents were deemed to have tacitly agreed with the issuance of an award based on the CAS file in its current state.
25. The CAS Court Office, having been informed by DHL that the letter dated 8 March 2018 had not been delivered to the Second Respondent, resent the Order of Procedure to the Second Respondent to be signed and returned before 26 March 2018. In same letter, the CAS Court Office informed the Second Respondent that unless she would indicate otherwise, she would be deemed to also agree with the issuance of an award based on the CAS file in its current state.

III. THE POSITION OF THE PARTIES

26. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Claimant and the Respondents. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

a) THE POSITION OF THE CLAIMANT

27. The IAAF submits that Rule 32.2(a) of the 2009 IAAF Competition Rules (the "2009 IAAF Rules") forbids the presence of a prohibited substance or its metabolites or markers in an athlete's sample.

28. The presence of DHCMT has been found in the Athlete's A sample. DHCMT is prohibited in- and out-of-competition under Section S1.1.a. of the 2009 Prohibited List. DHCMT is a non-specified substance.

29. It is clear that the Athlete committed an anti-doping rule violation (the "Re-testing violation").

30. The IAAF bases its claim on Rule 40.7.(d)(ii) 2009 IAAF Rules, pursuant to which "*If, after the resolution of a first anti-doping rule violation, facts are discovered involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification of the first violation, then an additional sanction shall be imposed based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time*".

31. For the ABP Violation, the Athlete accepted a two-year Ineligibility period as from 16 October 2013. As the Re-testing violation was discovered after 16 October 2013, but for a violation having occurred in 2009, Rule 40.7(d)(ii) should be applied and both the ABP Violation and the Re-testing Violation should be considered together in order to determine the level of the additional sanction.

32. The Ineligibility for presence, use or attempted use or possession of prohibited substances and prohibited methods is determined in application of Rule 40.2 of the 2009 IAAF Rules that provides as follows:

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

First violation: Two (2) years' Ineligibility".

33. With regard to aggravating circumstances which may increase the period of Ineligibility, Rule 40.6 2009 IAAF Rules specifies that:

"If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

- (a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.
- (b) An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) above and, in all events, before the Athlete competes again)".
34. The IAAF submits that the evidence in the present case shows that the Athlete used prohibited substances on multiple occasions, namely in respect to the Re-testing Violation on 19 August 2009 and in respect of the ABP Violation which she has admitted.
35. Also, the IAAF submits that as the aim of the haematological module of the ABP is to "identify enhancement of oxygen transport, including use of erythropoiesis-stimulating agents (ESAs) and any form of blood transfusion or manipulation", while the retesting violation involved an anabolic steroid (DHCMT), the Athlete used different prohibited substances, respectively methods.
36. Finally, the IAAF argues that pursuant to Rule 40.7(d)(i) of the 2009 IAAF Rules, the fact that the Athlete committed multiple anti-doping rules violations is an aggravating circumstance for the purpose of Rule 40.6 of the 2009 IAAF Rules.
37. In consideration of the multiple violations and the evidence of doping with multiple and different prohibited substances and methods (anabolic steroid and EPO/ blood transfusions), the IAAF submits that, had the Re-testing and the APB Violations been adjudicated at the same time, the Athlete would have been sanctioned with a four-year Ineligibility period.
38. Therefore, the IAAF requests that in accordance with Rule 40.7.(d)(ii) the Athlete be declared ineligible for two years, i.e. the total of four years less the Ineligibility period of two years already imposed on the Athlete.

39. As for the sanction of disqualification, in view of the fact that the Athlete's results have already been disqualified from 18 August 2009 until the start of her first Ineligibility period on 16 October 2013 and that she was then ineligible to compete for two years from the latter date, the IAAF does not seek any further disqualification of the Athlete.
40. In light of the above, the IAAF submits the following prayers for relief in the Request for Arbitration:
 - (i) *CAS has jurisdiction to decide on the subject matter of this dispute;*
 - (ii) *The Request for Arbitration of the LAAF is admissible.*
 - (iii) *The Athlete is found to have committed an anti-doping rule violation.*
 - (iv) *A period of ineligibility of up to two years is imposed upon the Athlete, commencing on the date of the CAS Award. The period of provisional suspension imposed on the Athlete 18 May 2017 until the date of the CAS Award, provided that it is effectively served by the Athlete, shall be credited against the total period of ineligibility to be served.*
 - (v) *The arbitration costs are borne entirely by RUSA or, in the alternative, jointly and severally by the Respondents.*

b) THE POSITION OF THE RESPONDENTS

41. Although duly invited, neither of the Respondents filed an Answer to the IAAF's Request for Arbitration, to be regarded as its combined Statement of Appeal and Appeal Brief, within the prescribed time limit or thereafter.
42. Pursuant to Article R55 of the CAS Code, the Sole Arbitrator can proceed to make an award in relation to IAAF's claims.
43. Despite the lack of any formal answer from the Respondents, the legal analysis below will take into account all available relevant information, and it is not restricted to the submissions of the IAAF.

IV. LEGAL ANALYSIS

A. JURISDICTION

44. The IAAF contends that the CAS has jurisdiction to hear as a first instance hearing body the dispute concerning the commission by the Athlete of an anti-doping rule violation as contemplated by Rule 38.3 of the 2016-2017 IAAF Rules, which provides as follows:

"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member [...] If the Member fails to complete a hearing within 2 months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the LAAF may impose a deadline for such event. If in either case the deadline is not met, the LAAF 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. [...].

45. RUSA's suspension of its membership with the IAAF was confirmed during the IAAF Council meeting in Monaco on 26 November 2015 and remains in place as on several occasions the IAAF Council maintained RUSA's suspension, lastly on 6 March 2018.
46. As a result, no entity has jurisdiction in Russia to conduct a hearing in the Athlete's case and IAAF took over the responsibility for coordinating the relevant disciplinary proceedings. In its letter dated 18 May 2017 to the Respondents, the IAAF informed that the case of the Athlete would be referred to the CAS under Rule 38.3 of the 2016-2017 IAAF Rules.
47. The Sole Arbitrator further notes that the Athlete is an international-level athlete as defined in Rule 1.9 of the IAAF Anti-Doping Rules effective from 3 April 2017 (the "IAAF ADR") and that, therefore, the conditions for the CAS jurisdiction under Rule 38.3 of the 2016-2017 IAAF Rules are met.

B. ADMISSIBILITY

48. The request for arbitration, to be considered as a combined statement of appeal and appeal brief, complies with the formal requirement set by the CAS Code. The Respondents do not challenge the admissibility of the request for arbitration.
49. Accordingly, the request for arbitration is admissible.

C. ORDINARY PROCEEDINGS

50. As these proceedings are based on a request for arbitration for the conduct of a first instance hearing and do not involve an appeal against a decision rendered by a sports-related body, they are considered as ordinary arbitration proceedings, within the meaning, and for the purposes, of the CAS Code.
51. However, in accordance with Rule 38.3 of the 2016-2017 IAAF Rules and as announced in the CAS Court Officer's letter of 2 November 2017, the present arbitration has been assigned to the Ordinary Division but will be dealt with according to the Appeals Arbitration Division rules (Articles 47 *et seq.* of the CAS Code) in application of Rule 38.3 IAAF ADR and Article S20 CAS Code.

D. APPLICABLE LAW

52. The IAAF submits that the IAAF rules and regulations are the applicable rules in this case. In the IAAF's view, the procedural aspects of these proceedings shall be subject to the 2016-2017 edition of the IAAF Rules. The IAAF further submits that for the substantive matters,

the Athlete's anti-doping rule violation is subject to the rules in place at the time of the alleged anti-doping rule violation, i.e. the 2009 IAAF Rules. To the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law shall be applied (on a subsidiary basis) to such issue.

53. Neither RUSA nor the Athlete submitted any specific position in respect of the applicable law.

54. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

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

56. The relevant parts of Article 1.7 of the IAAF ADR read as follows:

"These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons (...)

(b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the LAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held (...)"

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

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

58. Article 13.9.5 of the IAAF ADR further provides as follows:

"In all CAS appeals involving the LAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise".

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

"Any case pending prior to the Effective Date, or brought after the Effective Date but based on an Anti-Doping Rule Violation that occurred before the Effective Date, shall be governed, with respect to substantive

matters, by the predecessor version of the anti-doping rules in force at the time the Anti-Doping Rule Violation occurred and, with respect to procedural matters, by the version of the anti-doping rules in force immediately prior to the Effective Date save that (i) Article 10.7.5 of these Rules shall apply retroactively; (ii) Article 18 of these Rules shall also apply retroactively, unless the statute of limitations applicable under the predecessor version of the Rules has already expired by the Effective Date; and (iii) the relevant tribunal may decide it appropriate to apply the principle of lex mitior in the circumstances of the case”.

60. Based on the above and considering that the applicable law is not in dispute, the applicable laws in this arbitration are the IAAF rules and regulations, in particular the IAAF ADR and the relevant competition rules as well as Monegasque law.
61. Accordingly, procedural matters are governed by the version of the IAAF anti-doping rules in force immediately prior to the Effective Date (as defined in Article 1.13 of the IAAF ADR, i.e. 3 April 2017). Therefore, the 2016-2017 IAAF Rules in force as from 1 November 2015 are applicable to procedural matters.
62. With respect to the rules applicable to the substantive aspects of the case, the Sole Arbitrator notes that the Athlete’s violation occurred in August 2009. Consequently, pursuant to Article 21.3 of the IAAF ADR, the 2009 IAAF Rules shall apply to the substantive matters of the case, subject to the possible application of the principle of *lex mitior*.
63. As for the sanctions to be applied, the provisions concerning ineligibility in the 2009 IAAF Rules are clearly *lex mitior* in comparison to the IAAF ADR. Rule 40.2 of the 2009 IAAF Rules allow the Sole Arbitrator to order a period of ineligibility of two years for an intentional use of a prohibited substance, whereas the IAAF ADR set a standard sanction of four years for such violation.
64. With regard to the commencement of the ineligibility period, where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete, Article 10.10.2 (c) IAAF ADR allows a disciplinary panel to deem that the period of Ineligibility shall start as early as the date the anti-doping rule violation occurred. The 2009 IAAF Rules do not in itself enable such outcome. It follows that, in principle, the IAAF ADR lead to a more lenient outcome for the athlete in this respect. However, it has been accepted in CAS case law that if an athlete intentionally administers substances that make analysing the sample time-consuming, the delay is attributable to the athlete (CAS 2010/A/2041). Such a finding is also consistent with the comment concerning Article 10.11.1 of the World Anti-Doping Code 2015, which generally underlines that discovering and substantiating a doping offence may require a long time, in particular if the athlete endeavours to prevent the detection. In conclusion, the IAAF ADR are not *lex mitior* in comparison to the 2008 IAAF Rules in this respect either.
65. As to the disqualification of results, both the 2009 IAAF Rules (Rule 39.4) and the IAAF ADR (Article 10.8) require the annulment of all competitive results of the athlete obtained from the date the sample in question was collected through to the commencement of any provisional suspension or ineligibility period, unless fairness requires otherwise.

66. Based on the above considerations, the most favourable version of the IAAF rules for the Athlete is the 2009 IAAF Rules, which shall be applied in the substantive aspects of the matter at hand.

E. THE MERITS

67. The case before this Sole Arbitrator concerns the commission by the Athlete of the anti-doping rule violation contemplated by Rule 32.2(a) of the 2009 IAAF Rules and, in the event such violation is found, the determination of the consequences thereof. The Claimant requests that the Sole Arbitrator sanctions the Athlete found responsible of that anti-doping rule violation, with a period of Ineligibility of two years i.e. the total of four years less the Ineligibility period already imposed on the Athlete for her ABP Violation commenced on 13 October 2013.
68. The Respondents expressed no view on the Claimant's claims.
69. The Sole Arbitrator shall examine separately the issues of the commission by the Athlete of an anti-doping rule violation and, if the case, of the consequences thereof.

a) Has the Athlete committed an Anti Doping Rule Violation?

70. Rule 32.2(a) of the 2009 IAAF Rules essentially 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:*
- (a) *Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*
- (i) *it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 under Rule 32.2(a).*
- (ii) *sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample.*
- (iii) *except those Prohibited Substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*
- (iv) *as an exception to the general application of Rule 32.2(a), the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.*

71. Rules 33.1, 33.2, and 33.3 of the 2009 IAAF Rules, so far as material, stipulate the following:

"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.

(...)

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

(b) WADA-accredited laboratories and other laboratories approved by WADA are presumed to have conducted Sample analysis and custodial procedures in accordance with the international Standard for laboratories. the Athlete or other Person may rebut this presumption by establishing that a departure from the international Standard for laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the international Standard for laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the IAAF, Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding".

72. In order to establish the Athlete's anti-doping rule violation, the IAAF relies on the Adverse Analytical Finding in the Athlete's A sample collected on 19 August 2009 as well as on the facts that the Athlete has waived her right to the analysis of the B sample and thus is deemed to have accepted the sample A finding.

73. Rule 32.2(a) of the 2009 IAAF Rules forbids the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids.

74. The IAAF has produced a report issued by the Cologne laboratory on 31 March 2017 confirming the presence of DHCMT metabolites in the Athlete's A Sample.

75. Considering that the Athlete has not disputed the laboratory's finding, the Sole Arbitrator is comfortably satisfied that the Athlete has violated Rule 32.2(a) of the 2009 IAAF Rules and thus has committed an anti-doping rule violation.

b) What are the consequences to be imposed on the Athlete?

76. As a result, it is for the Sole Arbitrator to determine the consequences to be imposed on the Athlete for the anti-doping rule violation that she committed.

ba) The Duration of the Ineligibility Period

77. Rule 40.2 of the 2009 IAAF Rules reads as follows:

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

First violation: Two (2) years' Ineligibility".

78. DHCMT is not a specified substance. Furthermore, neither RUSA nor the Athlete have filed any submissions with the CAS with regard to the length of the ban or any other consequence for the anti-doping rule violation. In particular, the Athlete has not submitted to the CAS that the period of Ineligibility should be mitigated for some reason. Also, the Athlete has not provided any explanation for the presence of DHCMT in her sample.
79. As regards the aggravating circumstances which may increase the period of ineligibility, Rule 40.6 of the 2009 IAAF Rules provides as follows

"If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

- (a) *Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility".*

80. As specified in Rule 40.7(d)(i) of the 2009 IAAF Rules regarding additional rules for certain potential multiple violations, “[...] *the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)*”.
81. Hence, pursuant to Rule 40.7(d) (ii) “*if, after the resolution of a first anti-doping rule violation, facts are discovered involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification of the first violation, then an additional sanction shall be imposed based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time. Results in all events dating back to the earlier anti-doping rule violation will be Disqualified as provided in Rule 40.8. To avoid the possibility of a finding of aggravating circumstances (Rule 40.6) on account of the earlier-in-time but later-discovered violation, the Athlete or other Person must voluntarily admit the earlier anti-doping rule violation on a timely basis after notice of the violation for which he is first charged (which means no later than the deadline to provide a written explanation in accordance with Rule 37.4(c) above and, in all events, before the Athlete competes again). The same rule shall also apply when facts are discovered involving another prior violation after the resolution of a second anti-doping rule violation*”.
82. Therefore, as the present violation occurred in August 2009, i.e. before the notification of the ABP Violation, both violations must be considered together for determining the applicable sanction in application of Rule 40.7(d)(ii) of the 2009 IAAF Rules. Thus, an additional sanction shall be imposed based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time.
83. The Sole Arbitrator notes that the Athlete committed multiple anti-doping violations using different methods (anabolic steroids and EPO/blood transfusion), which justifies the increase of the period of Ineligibility otherwise applicable up to a maximum of four years in application of Rule 40.6 of the 2009 IAAF Rules.
84. For the ABP Violation in 2009, the Athlete accepted a two-year Ineligibility period commencing on 13 October 2013.
85. Therefore, the Athlete shall be sanctioned with an additional two-year period of Ineligibility for the Re-testing Violation under the 2009 IAAF Rules.

bb) The Commencement of the Ineligibility Period

86. The IAAF requests that a period of Ineligibility of two years is imposed upon the Athlete, commencing on the date of the CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the CAS Award shall be credited against the total period of Ineligibility to be served.
87. The rule indicating the starting moment of the period of Ineligibility is set by Rule 40.11 of the 2009 IAAF Rules, according to which:

“Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date the Ineligibility is accepted or otherwise imposed. ...”

(c) Credit for Provisional Suspension or Period of Ineligibility Served: If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal".

88. Considering that the Athlete has been imposed a provisional suspension as from 18 May 2017 and that such period shall be credited against the total period of Ineligibility, the Sole Arbitrator finds that the period of Ineligibility shall start on the date of the provisional suspension, i.e. 18 May 2017.

bc) Disqualification of Results

89. All of the Athlete's results having already been disqualified from 18 August 2009 to 15 October 2013 as a result of the ABD Violation, the Athlete having then been ineligible for two years until 15 October 2015 and the IAAF seeking no further disqualification, the Sole Arbitrator sees no necessity in further disqualifying the Athlete's results.

F. CONCLUSION

90. In light of the foregoing, the Athlete is found responsible for the anti-doping rule violation contemplated by Rule 32.2(a) [Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample] of the 2009 IAAF Rules. The sanction of ineligibility for two (2) years starting on the date of the provisional suspension, i.e. 18 May 2017.

(...)

97. The present Award may be appealed to the CAS pursuant to Rule 42 of the 2016-2017 IAAF Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by the International Association of Athletics Federations (IAAF) on 26 October 2017 is upheld.
2. Ms Elizaveta Grechishnikova is responsible for the anti-doping rule violation contemplated by Article 32.2.(a) of the 2009 IAAF Competition Rules.
3. Ms Elizaveta Grechishnikova is imposed the sanction of Ineligibility for two (2) years starting from 18 May 2017.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.