



Arbitration CAS 2018/O/5668 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) & Ivan Ukhov, award of 1 February 2019

Panel: Mr Markus Manninen (Finland), Sole Arbitrator

Athletics (high jump)

Doping (use or attempted use of prohibited substances)

Standard of comfortable satisfaction

Means of proving “use” violations

Assessment of evidence

Reliability of a document and use as evidence

Aggravating circumstances

Fairness with regard to the disqualification of results

- 1. The test of comfortable satisfaction must take into account the circumstances of the case. Those circumstances include the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities. A CAS panel is allowed to consider the cumulative effect of circumstantial evidence. Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, considered together they may suffice. The gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case. The comfortable satisfaction standard is a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the CAS panel would require to be ‘comfortably satisfied’.**
- 2. “Use” violations may be proven by “any reliable means” including, but not limited to, admissions, witness testimony and documentary evidence. A “Use” violation may also be established through other analytical information which does not otherwise satisfy all the requirements to establish an anti-doping rule violation (ADRV) based on presence of a prohibited substance. It is not necessary that a violation be proven by a scientific test itself.**
- 3. A sports body is not a national or international law enforcement agency, and its investigatory powers are more limited than the powers available to such bodies. When assessing the evidence available, a CAS panel shall take these limitations into consideration. It shall also consider that the absence of direct evidence is not necessarily an indication of innocence, but may equally be indicative that the wrongdoing has been effectively concealed. At the same time however, allegations that an athlete participated in a doping scheme are serious and it is not sufficient for the sports body merely to establish the existence of the doping scheme. Instead, it shall establish that the athlete**

himself or herself committed an ADRV. Furthermore, the seriousness of the allegations against the athlete require a high level of certainty of the athlete's guilt to be comfortably satisfied that the athlete committed an ADRV.

4. Unless there is a valid reason to find that the content of a particular document is not reliable, it may be used as evidence on an ADRV.
5. In accordance with Rule 40.6 of the 2012-2013 IAAF Competition Rules, ADRVs committed as part of a scheme, the use of multiple prohibited substances and on multiple occasions, as well as the fact that the athlete is unable to persuade the adjudicating body to its comfortable satisfaction that s/he did not knowingly commit the ADRVs constitute aggravating circumstances that justify the imposition of a period of ineligibility greater than the standard sanction, up to a maximum of four years.
6. Rule 40.8 of the 2012-2013 IAAF Competition Rules does not explicitly contain a fairness exception. However, CAS panels have previously deemed that Rule 40.8 of the 2012-2013 IAAF Rules, or its equivalents, include a fairness exception or at least that it cannot be excluded that a general principle of "fairness" may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect. Fairness exception is an embodiment of the principle of proportionality. The sanction to be imposed for an ADRV must be proportional considering the length of the ineligibility period and the disqualification of results, together and alone. Indeed, although the main purpose of the disqualification of results is not to punish the transgressor, but rather to correct any unfair advantage and to remove any tainted performances from the record, having regard to the fact that the disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction. CAS panels have broad discretion in adjusting the disqualification period to the circumstances of the case.

I. THE PARTIES

1. The International Association of Athletics Federations (the "*Claimant*" or the "*IAAF*") is the international governing body for the sport of athletics, recognised as such by the International Olympic Committee (the "*IOC*"). It has its seat and headquarters in Monaco.
2. The Russian Athletic Federation (the "*First Respondent*" or "*RUSAF*") is the national governing body for the sport of athletics in Russia. RUSAF has its registered seat in Moscow and is the relevant member federation, currently suspended from membership, of the IAAF for Russia.
3. Mr Ivan Ukhov (the "*Second Respondent*" or the "*Athlete*", together with the First Respondent, the "*Respondents*", the Respondents together with the Claimant, the "*Parties*"), born in 1986, is a top-level high jumper from Russia. He is a twelve-time Russian champion and won the gold

medal in men's high jump at the 2012 Summer Olympic Games in London (the "*London Olympic Games*"). The Athlete is an International-Level Athlete for the purposes of the IAAF Anti-Doping Rules.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings, and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his award only to the submissions and evidence he considers necessary to explain his reasoning.
5. Pursuant to a letter from the Athletics Integrity Unit (the "*AIU*") of the IAAF dated 27 October 2017, the AIU asserted that the Athlete had committed a number of anti-doping rule violations ("*ADRV*"), in particular by using anabolic steroids, during the years 2012 and 2013. The ADRVs are asserted in connection with two reports issued by Professor Richard McLaren on 16 July 2016 (the "*First IP Report*") and 9 December 2016 (the "*Second IP Report*", together with the First IP Report, the "*IP Reports*") as part of his mandate to investigate, as an Independent Person ("*IP*") mandated by the World Anti-Doping Agency ("*WADA*"), allegations of systemic doping practices in Russian sport.
6. The Athlete was given a deadline until 10 November 2017 to admit the violation and/or admit the violation and accept the consequences sought by the AIU. Furthermore, the Athlete was granted a deadline until 17 November 2017 to provide his explanation for the asserted ADRVs.
7. On 11 November 2017, the Athlete denied ever having doped.
8. On 17 November 2017, the Athlete provided the AIU with his explanations for the asserted ADRVs.
9. On 12 January 2018, the AIU informed the Athlete that it maintained its assertion that he had committed ADRVs and that his case would be referred to the CAS. The Athlete was granted a deadline until 26 January 2018 to choose whether to proceed under Rule 38.3 of the 2016-2017 IAAF Rules (first instance CAS hearing before a sole arbitrator) or Rule 38.19 of the 2016-2017 IAAF Rules (sole instance before a three-member CAS panel).
10. On 26 January 2018, the Athlete indicated that he had elected to proceed under Rule 38.19 of the 2016-2017 IAAF Rules.
11. On 22 February 2018, the AIU informed the Athlete that WADA did not agree to the submission of the case to a single hearing and that, therefore, the Athlete's case would be

referred to the CAS under Rule 38.3 of the 2016-2017 IAAF Rules (sole arbitrator of the CAS sitting as a first instance hearing panel).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 6 April 2018, the IAAF filed a Request for Arbitration with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2017 edition, the “CAS Code”). The IAAF informed the CAS that its Request for Arbitration was to be regarded as the IAAF’s Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the CAS Code, the procedure being governed by the CAS appeal arbitration rules, pursuant to Rule 38.3 of the 2016-2017 IAAF Rules. Furthermore, the IAAF requested that the matter be submitted to a sole arbitrator acting as a first instance body. The Request for Arbitration contained a statement of facts and legal arguments and included requests for relief.
13. On 13 April 2018, the CAS Court Office initiated the present arbitration and specified that the case had been assigned to the CAS Ordinary Arbitration Division but it would be dealt with in accordance with the appeal arbitration rules. The Respondents were invited to submit their answers.
14. On 26 April 2018, the Second Respondent requested an extension of the time limit for filing his answer until 29 June 2018 and provided his personal postal address.
15. On 3 May 2018, after having duly consulted the Claimant and the First Respondent, the CAS Court Office informed the Parties that the Second Respondent’s request had been granted. In addition, the CAS Court Office provided the Parties with the arbitrator’s acceptance and statement of independence form signed by Mr Markus Manninen, who had been appointed as the Sole Arbitrator.
16. On 10 May 2018, the First Respondent requested an extension for filing its answer until 29 June 2018.
17. On 11 May 2018, the Second Respondent challenged the appointment of Mr Manninen as the Sole Arbitrator pursuant to Article R34 of the CAS Code and requested that a replacement arbitrator be appointed by the CAS pursuant to Article R36 of the CAS Code.
18. On 15 May 2018, the CAS Court Office granted the Claimant and the First Respondent an opportunity to provide their position with respect to the Second Respondent’s challenge. The Parties were also advised that the challenge had been forwarded to the arbitrator for his comments.
19. On 16 May 2018, after having duly consulted the Claimant and the Second Respondent, the CAS Court Office informed the Parties that the First Respondent’s request for an extension had been granted. Accordingly, both Respondents were invited to submit their answers by 29 June 2018.

20. On 22 May 2018, the First Respondent informed the CAS that, considering the doubts raised in the Second Respondent's letter dated 11 May 2018 with regard to Mr Manninen's independence and impartiality, the First Respondent supported the challenge and requested the replacement of Mr Manninen. On the same day, the Claimant and Mr Manninen submitted in their respective submissions that the challenge be rejected.
21. On 24 May 2018, the CAS Court Office invited the Respondents to inform it whether they wished to maintain the challenge against the appointment of Mr Manninen. The Second Respondent informed the CAS Court Office that he chose to maintain his challenge, while the First Respondent maintained its support to this challenge. Moreover, the Second Respondent presented two additional grounds for the challenge.
22. On 1 June 2018, the CAS Court Office informed the Parties that the ICAS Board would render an Order on applications for Mr Manninen's challenge pursuant to Article R34 of the CAS Code.
23. On 29 June 2018, the Second Respondent filed his answer with the CAS. On the same day, the First Respondent informed the CAS Court Office that it would not be filing an answer but would reserve its right to comment on any further pleadings or correspondence submitted by the Claimant and/or the Second Respondent.
24. On 3 July 2018, the ICAS Board dismissed the challenge brought by the Second Respondent against the appointment of Mr Manninen as an arbitrator. On the same day, the CAS Court Office invited the Parties to inform it by 10 July 2018 whether they preferred that a hearing be held or that the Sole Arbitrator issue an award based solely on the written submissions.
25. On 4 July 2018 and in accordance with Article R54 of the CAS Code, the CAS Court Office informed the Parties that Mr Manninen had been appointed as the Sole Arbitrator.
26. On 9 July 2018, the Second Respondent informed the CAS Court Office that his preference was that a hearing be held. On the same day, the First Respondent informed the CAS Court Office that it supported the Second Respondent's position in this respect.
27. On 10 July 2018, the Claimant also informed the CAS Court Office that its preference was that a hearing be held.
28. On 26 July 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in the matter. In addition, the CAS Court Office informed the Parties that the Sole Arbitrator had deemed it justified to order a second round of written submissions. Accordingly, the Claimant was invited to submit a reply within 21 days from the receipt of the CAS Court Office's letter by courier. Finally, the Claimant was invited to submit its position on the Second Respondent's request relating to any reanalysis of his sample collected at the London Olympic Games.

29. On 2 August 2018, the Second Respondent requested that the Sole Arbitrator reconsider his decision to have a second round of written submissions and that the matter proceed to a hearing immediately.
30. On 6 August 2018, the Claimant confirmed that the Second Respondent's sample from 7 August 2012 was reanalysed by the IOC and that it was negative. Furthermore, the Claimant raised procedural issues concerning the transcripts filed by the Second Respondent and the lack of translations of some of the Second Respondent's exhibits.
31. On 7 August 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had confirmed his decision to have a second round of written submissions. Moreover, the CAS Court Office invited the Second Respondent to submit his position with respect to the transcripts and translations.
32. On 14 August 2018, the Second Respondent submitted his position with respect to the transcripts and filed further translations.
33. On 17 August 2018 and after consultation with the Parties, the CAS Court Office informed the Parties that the hearing would be held on 6-7 November 2018.
34. On 23 August 2018, the Claimant filed its reply with the CAS.
35. On 24 August 2018, the CAS Court Office invited the Respondents to file their second responses within 50 days from the receipt of the CAS Court Office's letter by courier.
36. On 30 August 2018, the CAS Court Office informed the Parties that in view of the Second Respondent's explanations on 14 August 2018, the Sole Arbitrator considered that the Claimant's remarks of 6 August 2018 relating to transcripts were moot.
37. On 19 September 2018, the Second Respondent requested that the Claimant be ordered to produce a full translation of specified documents filed by the Claimant. On the same day, the Claimant provided the names of the attendees to the hearing and noted that it would be necessary that Dr Rodchenkov's counsel is present during his testimony and that his appearance is not disclosed.
38. On 25 September 2018, the Claimant filed further translations.
39. On 9 October 2018, the Second Respondent provided the names of the attendees to the hearing and objected to Dr Rodchenkov's conditions for his testimony.
40. On 12 October 2018, the CAS Court Office granted the Claimant with the opportunity to submit its comments on the Second Respondent's objection relating to the modalities of Dr Rodchenkov's testimony.
41. On 16 October 2018, the Claimant commented on the Second Respondent's objection as to the modalities of Dr Rodchenkov's testimony and requested that they be dismissed. On the

same day, the CAS Court Office granted the Respondents an opportunity to comment on the Claimant's letter and sent an Order of Procedure to the Parties, and the Second Respondent filed its second response with the CAS.

42. On 18 October 2018, the Second Respondent informed the CAS Court Office that he accepted the modalities of Dr Rodchenkov's testimony. Furthermore, the Second Respondent returned the signed Order of Procedure to the CAS Court Office. On the same day, the Claimant also returned the signed Order of Procedure, and the First Respondent stated that it will not file a second response or attend the hearing and returned the signed Order of Procedure.
43. On 19 October 2018, the CAS Court Office informed the Parties that the hearing would be held on 7 November 2018.
44. On 2 November 2018, the Second Respondent informed the CAS Court Office that the Parties had agreed that the oral testimonies of the expert witnesses, i.e. Ms Wilson, Mr Sheldon, and Mr Rundt, and the submissions made by the Parties on those oral testimonies in a previous proceeding, *CAS 2018/O/5667*, regarding another Russian track and field athlete would be expressly integrated in the present proceedings.
45. On 7 November 2018, the hearing took place at the CAS Headquarters located in Lausanne, Switzerland. The Sole Arbitrator was assisted by Ms Pauline Pellaux, CAS Counsel. The following individuals attended the hearing:

For the IAAF:

Ms Laura Gallo (AIU, Results Management Coordinator, in-person)
Mr Ross Wenzel (Kellerhals Carrard, Counsel, in-person)
Mr Nicolas Zbinden (Kellerhals Carrard, Counsel, in-person)
Mr Rafael Dan Cesa (Kellerhals Carrard, Intern, in-person)
Mr Andrew Sheldon (Expert witness, by video on 23 October 2018)
Dr Grigory Rodchenkov (Witness, by video and with the assistance of a Counsel and of an interpreter)
Ms Avni Patel (Counsel for Dr Rodchenkov, Walden Macht & Haran, by video)

For the Athlete:

Mr Ivan Ukhov (Athlete, by video)
Mr Philippe Bärtsch (Schellenberg Wittmer, Counsel, in-person)
Mr Stefan Leimgruber (Schellenberg Wittmer, Counsel, in-person)
Mr Sebastiano Nessi (Schellenberg Wittmer, Counsel, in-person)
Ms Elza Reymond (Schellenberg Wittmer, Counsel, in-person)
Mr Nikita Sergeev (International Centre for Legal Protection, Counsel, in-person)
Ms Irène Wilson (Expert witness, by video on 23 October 2018)
Mr Manuel Rundt (Expert witness, by video on 23 October 2018)

Interpreters:

Mr Dmitri Zaitsev
Ms Tatiana Hay

46. During the hearing, the Counsel for the Second Respondent agreed to provide the Claimant with an e-mail from Mr Patsev to the Second Respondent. At the conclusion of the hearing, the Claimant and the Second Respondent confirmed that their right to be heard and treated equally had been fully respected.
47. On 13 November 2018, the Claimant informed the CAS Court Office that it had not received the e-mail as agreed in the hearing and reiterated its request to be provided with this e-mail.
48. On 14 November 2018, the CAS Court Office invited the Second Respondent to send the e-mail requested by the Claimant to an e-mail address to be specified.
49. On 16 November 2018, the Second Respondent submitted the e-mail from Mr Patsev to the Second Respondent of 15 November 2017 to the CAS Court Office.

IV. SUBMISSIONS OF THE PARTIES

50. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Sole Arbitrator has thoroughly considered in his deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference is made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.
51. The IAAF submits, in essence, the following:

The IP Reports

- The First IP Report found that (1) the Moscow Laboratory operated, for the protection of doped Russian athletes, within a state-dictated failsafe system, described in the First IP Report as the disappearing positive methodology (the "DPM"), and (2) the Ministry of Sport of the Russian Federation directed, controlled, and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the Russian Federal Security Service (the "FSB"), the Center of Sports Preparation of National Teams of Russia, and both the Moscow and Sochi Laboratories.
- The Second IP Report confirmed the key findings of the First IP Report and described in detail the DPM, the sample swapping, and the washout testing as follows.
- In the DPM, where the initial screen of a sample revealed an adverse analytical finding ("AAF"), the athlete would be identified and either "SAVED" or "QUARANTINED". The AAF would typically be notified by e-mail from the Moscow Laboratory to one of the liaison persons, who would respond in order to advise whether athlete(s) should be

“SAVED” or “QUARANTINED”. If the athlete was “SAVED”, the Moscow Laboratory would report the sample as negative in the Anti-Doping Administration & Management System (“ADAMS”). If the athlete was “QUARANTINED”, the analytical bench work on the sample would continue and the AAF would be reported in the ordinary manner.

- The sample swapping involved the replacement of “dirty” urine with “clean” urine. This necessitated the removal and replacement of the cap on sealed B sample bottles through a technique developed and implemented by an FSB team known as the “magicians”.
- The sample swapping was trialled with respect to a limited number of athletes at the 2013 University Games in Kazan and at the IAAF World Championships in Moscow in 2013 (the “*Moscow World Championships*”) and rolled out in more systematic fashion at the 2014 Winter Olympic Games in Sochi. It continued subsequently with respect to samples stored in the Moscow Laboratory.
- The sample swapping was facilitated by the establishment and maintenance of a “Clean Urine Bank” at the Moscow Laboratory. The Clean Urine Bank was comprised of unofficial urine samples provided by certain athletes that were analysed, stored, and recorded in schedules in the Moscow Laboratory (the “*Clean Urine Bank Schedules*”).
- The washout testing was deployed in 2012 in order to determine whether the athletes on a doping program were likely to test positive at the London Olympic Games. At that time, the relevant athletes were providing samples in official Bereg doping control kits. Even when the samples screened positive, they were automatically reported as negative in ADAMS. The Moscow Laboratory developed schedules to keep track of the athletes who were subject to washout testing in advance of the London Olympic Games (the “*London Washout Schedules*”).
- However, the combination of washout testing and automatic DPM, using official Bereg kits, only worked where the sample remained under the control of the Moscow Laboratory and was ultimately destroyed. The Moscow Laboratory, however, realised that as the Bereg kits were numbered and could be audited, seized, or tested, it would only be a matter of time before it was discovered that the contents of the samples did not match the entries in ADAMS. Therefore, the washout testing evolved prior to the Moscow World Championships. The washout testing was no longer performed with official Bereg kits but unofficial containers instead.
- The “under the table” washout testing consisted of collecting samples in regular intervals and subsequently testing those samples for quantities of prohibited substances to determine the rate at which those quantities were declining so that there was a certainty that the athlete would give a negative test in competition. If the washout testing determined that the athlete would not test negative at the competition, he or she was left at home.

- The Moscow Laboratory developed schedules to keep track of the athletes who were subject to this unofficial washout testing scheme (the “*Moscow Washout Schedules*”). The Moscow Washout Schedules were regularly updated when new washout samples arrived in the laboratory for testing.
- Professor McLaren’s findings are backed up by documentary, forensic, and analytical evidence. The web of cross-corroboration is such that the existence of the doping and anti-detection schemes presented in the IP Reports and the IP Evidence Disclosure Package (the “*EDP*”) evidence cannot be contested. The IAAF, however, primarily relies on the EDP evidence that was the basis for the IP Reports. In view of the sheer volume of and interlinks within the EDP evidence, any challenge on the authenticity and contemporaneous nature of the EDP evidence is untenable.
- It is clear from the properties of the most relevant EDP documents submitted in their native format that they were created and worked upon at the relevant times in 2012 and 2013.

Evidence Against the Athlete

- Within the context of the Second IP Report, the IP identified a significant number of Russian athletes who were involved in, or benefitted from, the doping schemes and practices that he uncovered (the “*Identified Athletes*”). The IP made the evidence of the involvement of the Identified Athletes publicly available on the EDP website. According to the IP and the IAAF, the evidence on the EDP was retrieved from the hard drive of Dr Rodchenkov and, after the metadata of all the documents was examined, the documents were determined to have been created contemporaneously to the events.
- All documents contained on the EDP website were anonymised, and each Identified Athlete was attributed one or more codes substituting for their name on the relevant documents. According to the IAAF, the Athlete is one of the Identified Athletes.
- According to the IAAF, the following information concerning the Athlete is recorded on the London Washout Schedules:
 - Sample 2729653 collected on 16 July 2012: “*T/E = 4.2, desoxymethyltestosterone 180000*”
 - Sample 2729649 collected on 21 July 2012: “*T/E = 4.2; desoxymethyltestosterone 120,000*”
 - Sample 2727843 collected on 27 July 2012: “*T/E = 4.2*”
 - Sample 2730798 collected on 27 July 2012: “*T/E = 4; desoxymethyltestosterone 60,000*”
- According to the IAAF, all samples were reported as negative in ADAMS. Considering that the purpose of the London Washout Testing was to ensure that the relevant athletes were clean by the time they were tested on the occasion of the Olympic Games, it is not

surprising that the reanalysis of the Athlete's sample collected at the London Olympic Games on 7 August 2012 was negative.

- With regard to the Moscow Washout Testing, five samples on the Moscow Washout Schedules are listed as belonging to the Athlete. The following information is recorded on the Moscow Washout Schedules:

Sample collected on 28 June 2013: "T/E = 6.7, desoxymethyltestosterone (700000), prohormones"

Sample collected on 2 July 2013: "T/E = 6.6, traces of DMT metabolite (60000)"

Sample collected on 6 July 2013: "T/E = 7, traces of DMT metabolite (20000)"

Sample collected on 17 July 2013: "T/E = 5, all clear"

Sample collected on 30 July 2013: "out-of-competition" "T/E = 11, steroid profile failed"

- The Athlete features on one of the Clean Urine Bank Schedules used for the purposes of swapping in clean urine in the event of a positive doping control. The relevant Clean Urine Bank Schedule dates from 27 April 2015.

Establishing ADRV

- Rule 32.2(b) of the 2012-2013 IAAF Competition Rules (*the "2012-2013 IAAF Rules"*) forbids the use or attempted use by an athlete of a prohibited substance or a prohibited method.
- The evidence indicates that the Athlete was one of the protected athletes who featured on the London Washout Schedules and whose positive samples in the lead-up to the London Olympic Games were automatically reported as negative in ADAMS.
- Three of the Athlete's London washout samples tested positive for the same prohibited substance, i.e. desoxymethyltestosterone ("*DMT*"). These samples demonstrate a gradual washout of the prohibited substance.
- The Athlete also features on the Moscow Washout Schedules, which comprised of athletes who were known to be following a doping programme. Again, the samples indicate a washing out of the same anabolic steroid, i.e. DMT.
- The fact that one of the Athlete's samples featured on a Clean Urine Bank Schedule is yet a further indication that he was part of a centralised doping programme.

- There is ample evidence that the Athlete used prohibited substances, in particular DMT, and was part of a centralised doping scheme. The Athlete has therefore breached Rule 32.2(b) of the 2012-2013 IAAF Rules.
- Pursuant to Rule 40.2 of the 2012-2013 IAAF Rules, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of ineligibility or for increasing it are met.
- A number of aggravating factors are relevant in the present case. First, the Athlete had used anabolic steroids (in particular DMT) on multiple occasions in the lead-up to the London Olympic Games and the Moscow World Championships, thereby committing multiple ADRVs. Second, the Athlete had been part of a centralised doping scheme. He provided unofficial samples for washout testing, and those of his official samples that did test positive for prohibited substances were “SAVED”, i.e. falsely reported as being clean. Third, the unofficial Moscow washout testing had been carried out in the run-up to the most important event organised by the IAAF, i.e. the World Championships in Russia. Its aim had been to ensure that the athletes sent to the competition would not test positive.
- In view of the multiplicity of aggravating circumstances and the fact that there is evidence of doping over the course of at least two years, the only appropriate period of ineligibility to be imposed on the Athlete is four years, which shall start on the date of the CAS award.
- According to Rule 40.8 of the 2012-2013 IAAF Rules, all the competitive results of an athlete obtained from the date of the first positive test through the commencement of any provisional suspension or ineligibility period shall be disqualified with all the resulting consequences, including forfeiture of any medals, points, and prizes.
- The first evidence of doping dates back to the first sample in the London Washout Schedules from 16 July 2012. Therefore, all the Athlete’s results from such date through to his provisional suspension or ineligibility must be disqualified. CAS panels have considered that it is not appropriate to maintain results on the basis of fairness where the doping is severe, repeated, and sophisticated as in the case at hand.

52. 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 IAAF is admissible.*
- (iii) The Athlete is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the IAAF Rules.*

- (iv) *A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*
- (v) *All competitive results obtained by the Athlete from 16 July 2012 through to the commencement of any period of Provisional Suspension or Ineligibility are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
- (vi) *The arbitration costs be borne entirely by the First Respondent or, in the alternative, by the Respondents jointly and severally.*
- (vii) *The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to the IAAF's legal and other costs".*

53. Although duly invited, RUSAF did not file 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. Nor did RUSAF file a response to the IAAF's second written submission or participate in the hearing in person or via Skype or other means of communication. Pursuant to Articles R55 and R57 of the CAS Code, the Sole Arbitrator can nevertheless proceed to make an award in relation to the IAAF's claims against RUSAF.

54. The Athlete submits, in essence, the following:

- The Athlete has had a very successful career as a high jumper. He is a twelve-time Russian champion and an Olympic champion in London in 2012. He objects to the charges raised and sanctions requested by the IAAF, which lack any merit. The Athlete has undergone countless doping tests over the course of his career, many of which were carried out outside of Russia. He has never been tested positive.
- The ADRVs have been asserted solely on the basis of the IP Reports. The IAAF simply accepted the subjective conclusions of Professor McLaren, which rely to the largest extent on the allegations of a single man, Dr Rodchenkov, who is not truthful and whose allegations have not been verified. In fact, many of Dr Rodchenkov's allegations have been proven wrong and considered to be mere hearsay and uncorroborated by evidence. Athletes cannot be sanctioned solely on the basis of the IP Reports, which were never intended to serve as a basis for establishing ADRVs against individual athletes. The IAAF bears the burden of proving that the Athlete committed an ADRV, and it must discharge this burden to the comfortable satisfaction of the Sole Arbitrator. The IAAF has failed to discharge that burden, and there is no basis for imposing sanctions on the Athlete.
- The investigation of Professor McLaren as well as his report and findings do not withstand scrutiny and do not meet the applicable evidentiary standards. The McLaren investigation is fraught with flaws and relies on insufficient and unreliable evidence. Other

sports federations, such as FIFA, as well as several CAS panels have concluded that the IP Reports cannot serve as proof of an ADRV by an individual athlete.

- Professor McLaren did not have the required level of independence and impartiality due to his prior ties to WADA and the strong views he had already expressed on the matters he was supposed to investigate. Furthermore, WADA gave Professor McLaren a one-sided mandate and insufficient time to conduct a thorough investigation. Pursuant to the terms of reference, the IP was appointed to review any evidence in support of the allegations of manipulation of samples. In addition, there are doubts as to the independence of other members of the “McLaren team”, of which little is known.
- The IP Report is largely based on the allegations of a single witness – Dr Rodchenkov – who is not truthful or credible and has no first-hand knowledge regarding the involvement of any individual athlete in the alleged doping scheme. Not a single individual specifically accused by Dr Rodchenkov to have been actively involved in the alleged institutional doping scheme has confirmed his allegations. Significant parts of Dr Rodchenkov’s story were qualified as mere hearsay by two independent CAS panels. In addition, Dr Rodchenkov provided his allegations to Professor McLaren in a situation where he was facing deportation from the United States. Thus, he had every interest to tell a spectacular story and has publicly stated that he regarded his story as a means of making money. Finally, Dr Rodchenkov has repeatedly changed his story whenever convenient to his own personal interests.
- Neither the IP nor any of his team members ever travelled to Russia to visit the Moscow Laboratory, nor did they ever even attempt to do so. This constitutes a violation of the investigative standards. The IP did not interview the individuals and government officials named in his report, which was also noted by two CAS panels adjudicating the appeals of Russian athletes against the life-time bans which the IOC had imposed on them. Nor did the IP interview any of the athletes that are implicated in the IP Report, including the Athlete.
- Another flaw in the McLaren investigation is that the origin of the purported evidence relied upon in the IP Reports remains dubious. All core forensic principles applicable to the recovery and examination of electronic data were ignored in the McLaren investigation. All of the documentary evidence relied upon by the IP allegedly originates from a single source, i.e. Dr Rodchenkov’s hard drives. More precisely, the IP purports to have relied on images of the hard drives that were given to him by the US authorities. After being given an image of the data located on Dr Rodchenkov’s hard drive, the McLaren team redacted parts of the individual documents and modified them. The reliability of these changes should have been validated by a documented process, involving different levels of quality control. However, no indication has been provided as to who and how many individuals were involved in manipulating the “evidence”.
- The Athlete has not been given access to the original data and metadata put forward by the Claimant. Without access to the original data and metadata, or to detailed

documentation about the identification and forensic acquisition of the original files, it is impossible to ascertain their origin and authenticity. Expert evidence confirms that it is easy to edit or remove external metadata from a file. This is very often done unintentionally, as basic file manipulation such as copying a file alters some external metadata, but can also be done intentionally with only a very rudimentary knowledge of IT. Based on the IP's own account of the facts, his expert could not have access to the original metadata of the original files, since the hard drives of Dr Rodchenkov remained with the US authorities. The forensic recovery of the original files purportedly located on Dr Rodchenkov's hard drive and their metadata would have been the only way of ascertaining the authenticity of the documents. The IP's assumption that documents from Dr Rodchenkov's hard drive are contemporaneous or that a particular individual is the author of a document are not based on solid evidence.

- The documents relied upon by the IP contained in the EDP suffer from numerous errors and inconsistencies. The inconsistencies go far beyond mere translation or redaction errors and call into question the reliability of the whole EDP. WADA, the IOC, and the IP have publicly acknowledged that the EDP contains errors.
- The IP relies on unnamed witnesses whose exact testimony is unknown and cannot be assessed. Unfairness and inequality of arms based on unchallenged anonymous evidence violates Article 6 of the European Convention on Human Rights (the "ECHR").
- The McLaren investigation was conducted in violation of WADA's mandatory investigation standards. First, the investigation was not conducted in a fair, objective, and impartial manner. Second, the IP did not make full use of his resources to interview potential witnesses or any of the athletes and to gather all the evidence. Third, the IP never visited the Moscow Laboratory. Fourth, the IP did not develop information and files into admissible and reliable evidence which would withstand scrutiny and meet the evidentiary standards applicable in the present proceeding.
- Many central findings in the IP Report have proven wrong. By way of example, with regard to the purported state-organised doping system, the Schmid Commission found that *"the IOC DC has not found any documented, independent and impartial evidence confirming the support or the knowledge of this system by the highest State authority"*. The First IP Report also incorrectly identified the components of the alleged "Duchess Cocktail" as trenbolone, oxandrolone, and methasterone. In the Second IP Report, methasterone is replaced with methenolone.
- The IP Report cannot be relied on to sanction individual athletes as confirmed by several independent panels. The IP Report merely sets out the subjective conclusions of the IP and cannot serve as evidence of individual ADRVs committed by the Athlete. Sports federations like the FIFA and FIL concluded that the "evidence" adduced by the IP and Dr Rodchenkov was insufficient to prove any wrongdoing by individual Russian athletes. The FIFA investigation was led by the FIFA Anti-Doping Unit in close collaboration with WADA and supported by external anti-doping specialists. The FIFA investigation

lasted over 17 months and was conducted in a comprehensive, diligent, and transparent manner. Having thoroughly assessed all of the “evidence” at its disposal, the FIFA Anti-Doping Unit concluded that there was insufficient evidence of an involvement of individual members of the Russian provisional squad in the manipulation scheme alleged by the IP. WADA agreed with FIFA’s decision to close the cases.

- Several CAS panels have ruled that the IP Report is insufficient to support any ADRV by individual athletes (CAS 2016/A/4486, CAS 2017/A/5379).

London and Moscow Washout Schedules

- With respect to the London and Moscow Washout Schedules, there is no evidence to confirm that the Athlete took the “Duchess Cocktail”. The Claimant has not explained why it has not reanalysed the respective samples, which, based on the doubtful and unreliable schedules, contain prohibited substances. Even Dr Rodchenkov does not have first-hand knowledge of the distribution of the “Duchess Cocktail” and the alleged washout testing programs.
- Concerning specifically the London Washout Schedules, the Claimant has failed to provide an explanation or evidence as to who created them, when they were created, for what purpose they were created, and why the lists look different and contain different information. The Claimant has not produced witness evidence supporting the allegation that the Athlete was part of the alleged London washout testing program. The Athlete confirms that he has never been offered and has never taken any prohibited substance. Nor did the Athlete have knowledge of any doping program.
- The first London Washout Schedule records that sample no. 2729653, collected from a male athlete in Novogorsk on 16 July 2012, allegedly contained desoxymethyltestosterone and a T/E level of 4.2. The Athlete does not dispute that he provided this sample. However, he disputes the allegation that the sample contained “*desoxymethyltestosterone 180,000*”. The Claimant has failed to offer any explanation with regard to what happened to the sample after it was collected, where it was taken, where it was analysed, by whom it was analysed, whether there is a B sample, and why the sample has not been reanalysed to verify the alleged presence of prohibited substances. The only link between DMT and sample no. 2729653 is the fact that DMT was written next to the sample number in the London Washout Schedule. There is no other evidence of the Athlete’s alleged use of DMT. In fact, the Claimant’s allegation regarding the presence of DMT in sample no. 2729653 is contradicted by other evidence. The ADAMS results conclude that the sample was negative. Furthermore, the T/E level of 4.2 would not constitute an abnormal ratio for the Athlete. The Athlete’s high T/E ratio is of endogenous nature, confirmed by Dr Rodchenkov in 2009.
- With regard to the second London Washout Schedule, the Athlete does not dispute that he provided sample no. 2729649, but the document fails to demonstrate that the Athlete took any prohibited substances. The ADAMS test report confirms that no prohibited

substances or prohibited methods were detected, which is clear evidence that the doping test was negative. Second, the T/E ratio in the London Washout Schedule differs from the ratio indicated in the laboratory results by RUSADA, which raises questions with regard to the reliability of the London Washout Schedule.

- The third London Washout Schedule contains entries for samples no. 2727843 and 2730798. The latter entry mentions "*T/E = 4; desoxymethyltestosterone 60,000*". The Athlete does not deny that he provided these samples. However, even if one were to assume that the entries actually reflect test results, the results would be useless, as it is impossible that two samples taken on the same day show different results. In addition, the results are contradicted by other evidence, such as ADAMS test reports.
- The Athlete provided a urine sample at the London Olympic Games on 7 August 2012. The sample was analysed by the WADA-accredited laboratory in London and tested negative. The samples of other Russian track and field athletes who underwent a doping test at the London Olympic Games were also reanalysed and revealed, according to the Claimant, the presence of prohibited substances in the samples of a majority of the athletes that had allegedly been involved in the so-called London washout testing program. The Claimant tries to establish its case based on the test results of other athletes, which is unacceptable.
- With regard to the Moscow Washout Schedule, it is unclear who created it and for what purpose. There is no sound basis to rely on this schedule or the results of unofficial samples reflected therein. There is no record of the circumstances in which the samples were collected or of the fact that they have been collected at all. There is no explanation or evidence as to who collected the alleged unofficial samples, where those samples were collected, how it can be ascertained that a certain sample belonged to a certain athlete, and who conducted the analysis. Without such information, the Claimant's case must fail.
- The Athlete has never provided any unofficial urine samples. The only link between the samples and the Athlete is the fact that his name is written next to them on a table. Anyone could have written the Athlete's name next to these samples, which may not have been collected at all. Furthermore, a comparison of the different versions of the Moscow Washout Schedule confirms the dubious and unreliable nature of the document. The different versions of the Moscow Washout Schedule contain numerous discrepancies.
- The Athlete provided official urine samples during the period of the purported Moscow Washout Schedule program, i.e. between 28 June 2013 and 30 July 2013, when he allegedly also provided the unofficial samples. Given that the Athlete provided several official urine samples during the relevant period, it is extremely unlikely and makes no sense for him to provide unofficial samples. Moreover, the Athlete was in Kazan from 6 to 10 July 2013 for the Summer Universiade 2013. Bearing in mind that the alleged purpose of the washout testing programs was to ensure that athletes would be clean for international competitions, it is not plausible that the Athlete was sent to the competition although he had tested positive with traces of DMT metabolite on 6 July 2013.

Clean Urine Bank

- With regard to the Clean Urine Bank Schedule, the Claimant fails to explain who prepared the list, on the basis of which information, for what exact purpose, what the title of the document is, what the different columns refer to, in what circumstances the urine was provided, and by whom and how the clean urine was collected and stored. There is no evidence that the Athlete ever provided clean urine. In a recent CAS proceeding, the panel emphasised that there was no direct physical evidence or witness testimony to substantiate allegation regarding the provision of clean urine for the purposes of swapping in clean urine in case of a positive doping control. No probative value can be given to the Clean Urine Bank Schedule.

Aggravating Circumstances

- In any event, the Claimant has failed to establish any aggravating factors, and the requested period of ineligibility is grossly disproportionate. The aggravating circumstances alleged by the Claimant contain the same elements as those asserted to show the Athlete's ADRV. The Claimant has failed to discharge its burden of proving an ADRV by the Athlete to the standard of comfortable satisfaction. It follows that it has also failed to discharge its burden of proving the aggravated circumstances. Furthermore, a period of ineligibility of four years would be unreasonable and grossly disproportionate with regard to the circumstances of the case at hand. Given the Athlete's previously untarnished doping record, a period of ineligibility of four years would be disproportionate.
- An ADRV finding requires particularly cogent evidence showing that the Athlete personally and knowingly committed a specific and identifiable ADRV. The rules enshrine the fundamental principle of individual guilt and responsibility. Even if the existence of an alleged wide doping scheme were established, it would be insufficient in itself to sanction the Athlete.
- The Claimant's position boils down to accusing the Athlete, without any direct or cogent proof, of knowingly participating in a corrupt conspiracy. It is not the Sole Arbitrator's task to ascertain the existence of any alleged doping scheme, let alone would that suffice to sanction the Athlete. The vast majority of the Claimant's exhibits do not concern the Athlete.
- The allegations regarding the alleged authenticity and contemporaneous nature of the EDP documents supported by the expert report of Mr Sheldon do not withstand scrutiny from a forensic point of view. The documents and the expert report filed by the Claimant do not permit an assessment of the authenticity or date of creation of these documents. As Mr Rundt confirms, authenticity does not mean that the document itself is genuine or that its contents are true. The contents of the document could still be completely made up or the document could still have been manipulated or forged before the first forensic

evidence preservation was done. Authenticity is most often established through the use of hash values. Mr Sheldon does not contend having received any hash values and timestamps from the original evidence. Even assuming that they were authentic, the purported evidence filed by the Claimant is unfit to sanction the Athlete.

- Dr Rodchenkov's witness statement is irrelevant and unreliable. He does not make any allegations regarding the Athlete. Irrelevant allegations include the alleged doping program in 2005 through 2008, sample-swapping scheme in 2013, and a urine bank in 2015. Neither Dr Rodchenkov nor the Claimant have alleged that the Athlete had taken part or otherwise benefited from the sample-swapping scheme. There is no proof linking EDP 0757 to an alleged clean urine bank, let alone to the Athlete. Nor is there evidence that the Athlete ever provided clean urine. Dr Rodchenkov's testimony provides no support for the Claimant's allegation that the Athlete took part in or otherwise benefited from any washout program in 2012 or 2013. Dr Rodchenkov never witnessed any athlete take a prohibited substance.
- The one document which is relevant to the Athlete's case is the result of a recent reanalysis of a sample which the Athlete provided during the London Olympic Games. The reanalysis, conducted with improved analytical methods, confirmed that the sample did not show any trace of prohibited substances. The only evidence on record actually relating to the Athlete's case shows that he did not commit an ADRV.

55. In light of the above, the Athlete has requested in his second submission that the Sole Arbitrator grant the following relief:

“(1) declare that Mr Ivan Ukhov is not guilty of any anti-doping rule violations under Rule 32.2(b) of the 2012 IAAF Competition Rules;

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

(3) dismiss the IAAF's request for disqualification of all competitive results obtained by Mr Ivan Ukhov from 16 July 2012 through to the commencement of any period of provisional suspension or ineligibility;

(4) order the IAAF to compensate Mr Ivan Ukhov for all costs of the arbitral proceedings including the fees and expenses of the Sole Arbitrator, and Mr Ivan Ukhov's attorney fees and expenses”.

V. JURISDICTION AND APPLICABILITY OF THE APPEAL ARBITRATION PROCEDURE

56. The IAAF maintains that the jurisdiction of the CAS derives from Rule 38.3 of the 2016-2017 IAAF Rules, effective from 1 November 2015.

57. Rule 38.3 of the 2016-2017 IAAF Rules 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. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. (...)”.

58. The suspension of RUSAF's IAAF membership was confirmed on the occasion of the IAAF Council meeting in Monaco on 26 November 2015. On 17 June 2016, 1 December 2016, 6 February 2017, 2 July 2017, and 31 July 2017, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership, and the IAAF Congress maintained the suspension of RUSAF at its meeting on 3 August 2017. On 26 November 2017, 6 March 2018, 27 July 2018, and 4 December 2018, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership, and therefore, RUSAF's suspension remained in place. As a consequence of its suspension, RUSAF was not in a position to conduct the hearing process in the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the 2016-2017 IAAF Rules.
59. Consequently, RUSAF is not in a position to convene a hearing within the two-month time period set out in Rule 38.3 of the 2016-2017 IAAF Rules. In these circumstances, it is not necessary for the IAAF to impose a deadline on RUSAF for this purpose.
60. The Sole Arbitrator notes that it is undisputed that the Athlete is an International-Level Athlete as defined in the IAAF Anti-Doping Rules and that RUSAF is indeed prevented from conducting a hearing in the Athlete's case within the deadline set by Rule 38.3 of the 2016-2017 IAAF Rules. The Sole Arbitrator confirms that the IAAF has therefore been permitted to refer the matter directly to a sole arbitrator appointed by the CAS, subject to an appeal to CAS in accordance with Rule 42 of the 2016-2017 IAAF Rules. Finally, the Sole Arbitrator observes that the Respondents have not challenged the jurisdiction of the CAS. On the contrary, the Respondents have confirmed the jurisdiction of the CAS by signing and returning the Order of Procedure to the CAS Court Office.
61. Further, although the present procedure is a first-instance procedure that has consequently been assigned to the Ordinary Arbitration Division, in accordance with Rule 38.3 of the 2016-2017 IAAF Rules, the rules of the CAS appeal arbitration procedure shall apply.
62. It follows that the CAS has jurisdiction to adjudicate and decide the present matter and that the present case will be dealt with in accordance with the appeals arbitration rules.

VI. ADMISSIBILITY

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

VII. APPLICABLE LAW

64. 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 are subject to the 2016-2017 edition of the IAAF Rules. The IAAF further submits that for the substantive matters, the Athlete's ADRV is subject to the rules in place at the time of the alleged ADRV. Thus, the applicable IAAF Rules are the 2012-2013 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.

65. RUSAF has not put forward any specific position in respect of the applicable law. The Athlete has notified that it agrees with the IAAF that the substantive issues of the present matter should be decided pursuant to the 2012-2013 IAAF Rules and, subsidiarily, Monegasque law.

66. 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".

67. This provision is in line with Article 187, paragraph 1 of the Swiss Private International Law Act (PILA), the English translation of which 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"*.

68. The relevant parts of Article 1.7 of the IAAF Anti-Doping Rules effective from 6 March 2018 (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 IAAF (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 (...)

(d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping”.

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

“In all CAS appeals involving the IAAF, the CAS Panel shall be bound by the IAAF 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 IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence”.

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

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

71. 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 (i) for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules and (ii) for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules. Notwithstanding the foregoing, (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 had 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”.*

72. 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 and, subsidiarily, Monegasque law.

73. Pursuant to Article 21.3 of the IAAF ADR and taking into account that the Athlete’s ADRVs were allegedly committed prior to 3 April 2017, the Sole Arbitrator is satisfied that procedural matters are governed by the 2016-2017 IAAF Competition Rules.

74. With respect to the rules applicable to the substantive aspects of the case, the Sole Arbitrator notes that the Athlete’s contended violations have occurred in 2012 and 2013. Consequently, pursuant to Article 21.3 of the IAAF ADR, the 2012-2013 IAAF Rules will apply to the substantive matters of the purported ADRVs, subject to the possible application of the principle of *lex mitior*.

75. As for the sanctions to be applied, the provisions concerning ineligibility in the 2012-2013 IAAF Rules are clearly *lex mitior* in comparison to the IAAF ADR. The 2012-2013 IAAF Rules

allow the Sole Arbitrator to order a period of ineligibility of two years for the intentional use of a banned substance, whereas the IAAF ADR set a standard sanction of four years for such violation.

76. 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) of the IAAF ADR allows a disciplinary panel to deem that the period of ineligibility shall start as early as the date the ADRV has occurred. In contrast, the language of the 2012-2013 IAAF Rules does not in itself produce such outcome. It follows that, in principle, the IAAF ADR lead to a more lenient outcome for the athlete in this respect. However, the comment concerning Article 10.11.1 of the World Anti-Doping Code (the “WADC”) 2015 generally underlines that discovering and substantiating a doping offence may require a long time, in particular if the athlete endeavours to prevent the detection. The comment then goes on to state that, in such circumstances, the flexibility provided by Article 10.11.1 to start the sanction at an earlier date should not be used. In conclusion, the IAAF ADR are not *lex mitior* in comparison to the 2012-2013 IAAF Rules in this respect, either.
77. As to the disqualification of results, Article 10.8 of the IAAF ADR requires the annulment of all competitive results of an athlete obtained between the date the sample in question has been collected and the commencement of any provisional suspension or ineligibility period, unless fairness requires otherwise. The Sole Arbitrator further notes that CAS panels have deemed that Rule 40.8 of the 2012-2013 IAAF Rules also includes a fairness exception, even though not explicitly mentioned therein (see e.g. CAS 2016/O/4464), or at least that it cannot be excluded that a general principle of “fairness” may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect (see e.g. CAS 2015/A/4005).
78. Based on the above considerations, the most favourable versions of the IAAF rules for the Athlete are the 2012-2013 IAAF Rules, which will be applied to the substantive aspects of the matter at hand.

VIII. MERITS

79. The Sole Arbitrator wishes to point out that while he has carefully considered the entirety of the Parties’ written and oral submissions, expert reports, witness statements, and oral testimony at the hearing, he only relies below on evidence which he deems necessary to decide this dispute.
80. Considering all Parties’ submissions, the main issues to be resolved by the Sole Arbitrator are the following:
- A. Did the Athlete commit an anti-doping rule violation prior to the London Olympic Games in 2012, i.e. did he violate Rule 32.2(b) of the 2012-2013 IAAF Rules?
 - B. Did the Athlete commit an anti-doping rule violation prior to the Moscow World Championships in 2013, i.e. did he violate Rule 32.2(b) of the 2012-2013 IAAF Rules?

C. If either or both questions are answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. Did the Athlete Commit an ADRV Prior to the London Olympic Games in 2012?

81. Before addressing the merits of the Parties' factual and legal arguments, the Sole Arbitrator finds it necessary to identify the relevant provisions which define the specific ADRVs that the Athlete is alleged to have committed and govern how the Sole Arbitrator shall carry out his task of determining whether the Athlete in fact committed one or more ADRVs.

a. Use of a Prohibited Substance

82. Rule 32.2(b) of the 2012-2013 IAAF Rules reads, in the essential parts, as follows:

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

(...)

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

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

83. “Use” has been defined in the 2012-2013 IAAF Rules as follows:

“The utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method”.

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

b. Burdens and Standards of Proof

85. Rules 33.1 and 33.2 of the 2016-2017 IAAF Rules, in the essential parts, stipulate the following:

“Burdens and Standards of Proof

1. The IAAF, Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, Member or other prosecuting

authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

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

86. The corresponding rules of the 2012-2013 IAAF Rules are practically identical with the 2016-2017 IAAF Rules.
87. The Sole Arbitrator notes that in order to establish an ADRV under the IAAF Rules, the Sole Arbitrator must be comfortably satisfied that a violation has taken place. This standard is expressly stated in the IAAF Rules to be greater than a mere balance of probability but less than proof beyond a reasonable doubt.
88. CAS jurisprudence provides guidance on the meaning and application of the “*comfortable satisfaction*” standard of proof. The test of comfortable satisfaction “*must take into account the circumstances of the case*” (CAS 2013/A/3258). Those circumstances include “[*t*]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities” (CAS 2009/A/1920; CAS 2013/A/3258).
89. The CAS panel confirmed in 2015/A/4059 (paras. 107-108) that a panel is allowed to consider the cumulative effect of circumstantial evidence. Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, considered together they may suffice.
90. The gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case. In CAS 2014/A/3625, the panel stated that the comfortable satisfaction standard is “*a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be ‘comfortably satisfied’*”.

c. Means of Proof

91. Rule 33.3 of the 2016-2017 IAAF Rules reads as follows:

“Methods of Establishing Facts and Presumptions

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

92. Rule 33.3 of the 2012-2013 IAAF Rules is practically identical with the 2016-2017 IAAF Rules.
93. According to Rule 48.3 of the 2016-2017 IAAF Rules, the comments annotating various provisions of the WADC shall be used to interpret the 2016-2017 IAAF Rules. Comment to Article 3.2 of the 2015 edition of the WADC reads as follows:
- “an Anti-Doping Organization may establish an anti-doping rule violation under Article 2.2 based on the Athlete’s admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Athlete’s blood or urine Samples, such as data from the Athlete Biological Passport”.*
94. Furthermore, the comment to Article 2.2 of the WADC specifically addresses the permissible means of proving ADRVs that consist of the use of a prohibited substance or a prohibited method:
- “It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish ‘Presence’ of a Prohibited Substance under Article 2.1”.*
95. In conclusion, “Use” violations may be proven by “any reliable means” including, but not limited to, witness testimony and documentary evidence. A “Use” violation may also be established through “other analytical information which does not otherwise satisfy all the requirements to establish” an ADRV based on presence of a prohibited substance.
96. The above has been confirmed in CAS case law. In CAS 2004/O/645, the CAS panel imposed a sanction on an athlete based alone on the athlete’s admission to a fellow athlete and the latter’s testimony before the CAS.
97. In CAS 2005/A/884, the CAS panel noted as follows (para. 48):
- “It is important to note that this rule gives greater leeway to USADA and other anti-doping agencies to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not necessary that a violation be proven by a scientific test itself. Instead, as some cases have found, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation”.*
98. In CAS 2010/A/2083, the CAS panel found the athlete guilty of a “Use” violation based on (1) a report describing the organisation and operations of a medical doctor’s doping network and the evidence recovered in connection with so-called Operation Puerto, (2) documents recovered from Operation Puerto and other sources, evidencing travel by the athlete to the vicinity of the medical doctor, the withdrawal of blood from athletes on specific dates, and

payments from the athlete to the medical doctor, and (3) a report comparing DNA materials taken from the athlete against samples provided by the Spanish Civil Guard.

99. In CAS 2017/O/5039, the CAS panel accepted that a Moscow Washout Schedule, read in connection with the IP Report, was a strong indication that the athlete had used prohibited substances.
100. In CAS 2017/A/5422, the CAS panel concluded that the results of the scientific analysis of the content of the athlete's urine samples, namely the physiologically impossible level of salt in the athlete's samples together with confirmation through the DNA analysis that those samples contained the athlete's urine and the absence of any concrete and plausible explanation, established to the panel's comfortable satisfaction that the athlete had committed an ADRV in the form of the use of a prohibited method (para. 791). Once it was established that the athlete deliberately facilitated the substitution of his urine in order to conceal his use of a prohibited substance, the presence of the athlete's name on the Duchess List was deemed to provide some additional support for the conclusion that the athlete did in fact use a prohibited substance, and the athlete was found to have committed an ADRV in the form of the use of a prohibited substance as well (para. 814).
101. In consideration of the applicable provisions and the case law set out above, the Sole Arbitrator notes that the following principles shall guide his assessment of the allegations and evidence in the present case.
102. First, the onus is on the IAAF to establish the existence of an ADRV to the comfortable satisfaction of the Sole Arbitrator. This standard is higher than a mere balance of probabilities, meaning that it is insufficient for the IAAF to establish that it is more likely than not that the Athlete committed an ADRV. However, the Sole Arbitrator is not required to be satisfied beyond any reasonable doubt of the Athlete's guilt.
103. Second, in considering whether he is comfortably satisfied that an ADRV has occurred, the Sole Arbitrator will consider all the relevant circumstances of the case. In the context of the present case, the relevant circumstances include, but are not limited to, the following.
104. The IAAF contends that the Athlete "*was part of a centralized doping scheme, which included manipulations to avoid positive results being reported*". The alleged doping scheme was intended and designed to conceal evidence of wrongdoing. As a result, the more successful the alleged scheme was, the less direct evidence of wrongdoing is likely to be available to the IAAF. The Sole Arbitrator thus notes that the absence of direct evidence is not necessarily an indication of innocence, but may equally be indicative that the wrongdoing has been effectively concealed.
105. The IAAF is not a national or international law enforcement agency, and its investigatory powers are more limited than the powers available to such bodies. The Sole Arbitrator's assessment of the evidence shall take these limitations into consideration.

106. Having said that, the Sole Arbitrator is mindful that the allegations asserted against the Athlete are serious and that it is not sufficient for the IAAF merely to establish the existence of a doping scheme. Instead, the IAAF shall establish that the Athlete himself committed an ADRV. Further, considering the seriousness of the allegations against the Athlete, the Sole Arbitrator requires a high level of certainty of the Athlete's guilt to be comfortably satisfied that the Athlete committed an ADRV.

d. *Violation of Rule 32.2(b) of the IAAF Rules by the Athlete in 2012*

107. The IAAF has based its claims regarding the Athlete's ADRV of 2012 under Rule 32.2(b) of the 2012-2013 IAAF Rules on the findings of the IP Reports on the doping scheme in Russia and, in particular, on three London Washout Schedules, i.e. Excel spreadsheets containing data of four urine samples provided by the Athlete. In general terms, the Athlete has challenged the findings of the IP Reports and the reliability of the London Washout Schedules. He puts forth that it is impossible to ascertain the origin of the London Washout Schedules and points out that it is easy to manipulate electronic files. In the Athlete's view, the London Washout Schedules cannot serve as evidence of ADRVs against him. These issues are examined in the following.

i. Previous Findings on Doping in Russia in the 2010s

108. On 9 November 2015, the Independent Commission appointed by WADA delivered its final report relating to doping practices in Russia (the "*IC Report*"). According to the IC Report (p. 10), the investigation "*has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams. The cheating was done by the athletes' entourages, officials and the athletes themselves*".

109. On 16 July 2016, the IP submitted the First IP Report, which contains the following key findings (p. 1):

"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.

(...)

3. The Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both Moscow and Sochi Laboratories".

110. On 5 August 2016, the existence of the DPM was confirmed by a CAS panel in CAS OG 16/009. The panel noted as follows:

"7.10 (...) the IWF based its decision on the information in the Independent Person's Report (...). A centrepiece of this report is the finding concerning the so-called "Disappearing Positive Methodology". (...)

7.11 (...) The Panel also finds that the information on which the IWF based its decision is – contrary to what the Applicant has submitted – on its face is [sic] sufficiently reliable. First, the Panel notes that the findings of the McLaren Report in relation to the “Disappearing Positive Methodology” meet – according to the report – a high threshold, because the standard of proof that was applied was “beyond reasonable doubt”.

7.12 The Panel further notes that the findings of the McLaren Report were taken seriously by the IOC and lead to the IOC Executive Board’s decision dated 24 July 2016 that enacted eligibility criteria specifically for Russian athletes, which is unique in the history of the Olympic Games. Also the findings were endorsed by WADA, the supreme authority in the world of sport to lead and coordinate the fight against doping and by other international federations, such as the IAAF. Furthermore, the information contained in the McLaren Report is also corroborated by the reanalysis of the athlete’s [sic] samples at the London and Beijing Olympics. All nine 9 [sic] Russian athletes have tested positive for the (same) substance Turinabol. This is a strong indication that they were part of a centrally dictated program. (...).

111. On 9 December 2016, the IP issued the Second IP Report. The Second IP Report confirms the findings of the First IP Report and notes as follows (p. 1):

“1. An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, CSP and the Moscow Laboratory, along with the FSB for the purpose of manipulating doping controls. The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report.

2. This systematic and centralised cover up and manipulation of the doping control process evolved and was refined over the course of its use at London 2012 Summer Games, Universiade Games 2013, Moscow IAAF World Championships 2013, and the Winter Games in Sochi in 2014. The evolution of the infrastructure was also spanned in response to WADA regulatory changes and surprise interventions”.

112. Accompanying the Second IP Report is a release of the non-confidential evidence that the IP has examined, named EDP. With regard to the IP’s investigative method, the IP conducted, among other things, cyber and forensic analysis of documentary evidence retrieved from hard drives, backups, and e-mails.

113. As to the sufficiency of the evidence to prove an ADRV by an individual athlete, the Second IP Report (pp. 35-36) states that “[t]he different types of evidence provided with respect to any individual athlete are like strands in a cable. It will be up to each Results Management Authority to determine whether the provided strands of evidence, standing alone or together build a sufficiently strong cable to support an ADRV in an individual case”.

114. On 2 December 2017, the IOC Disciplinary Commission’s Report to the IOC Executive Board (the “Schmid Report”) was issued. The Schmid Report presented the following factual conclusions:

“1) The analysis of the documented, independent and impartial elements, including those confidentially transmitted to the IOC DC, is corroborated by the forensic analysis performed by the ESC-LAD and the

biological analysis carried by the CHUV. This enables the confirmation of the existence of the Disappearing Positive Methodology as well as a tampering methodology, in particular during the Olympic Winter Games Sochi 2014, as described in the Final Report by Prof. Richard McLaren.

The IOC DC confirms the seriousness of the facts, the unprecedented nature of the cheating scheme and, as a consequence, the exceptional damage to the integrity of the IOC, the Olympic Games and the entire Olympic Movement.

(...)

5) The IOC DC noted that the system progressed along with the evolution of the anti-doping technologies: initially the DPM was based on cheating in the reporting mechanism ADAMS, subsequently it escalated into a more elaborated method to report into ADAMS by creating false biological profiles; ending with the tampering of the samples by way of swapping “dirty” urine with “clean” urine. This required a methodology to open the BREG-KIT® bottles, the constitution of a “clean urine bank” and a tampering methodology to reconstitute the gravity of the urine samples. This was confirmed by the results of the UNIL-ESC / CHUV forensic and biological analysis.

(...)

7) The detailed analysis of the e-mail exchanges attached to the IP Reports, (...) allows to confirm the involvement of a number of individuals within the Ministry of Sport and its subordinated entities, such as CSP, VNIIFK, RUSADA, Moscow and Sochi Laboratories. All the independent and impartial evidence as well as the results of the forensic and biological analysis confirm this conclusion”.

115. The Sole Arbitrator notes that the above reports conclude that there was a widespread doping system in Russia in the 2010s. It is not the task of the Sole Arbitrator to make any further findings on the doping scheme itself but to assess whether the Athlete has committed an ADRV.
116. The existence of a general doping and cover-up scheme does not automatically lead to the conclusion that the Athlete committed the ADRVs alleged by the IAAF. However, the different types of facts and conclusions provided by the IP Reports and the Schmid Report, together with the supporting documents submitted to the Sole Arbitrator, are circumstantial evidence that may be used in assessing whether the Athlete has committed an ADRV under the IAAF Rules (see also CAS 2017/O/5039 para. 91). The Sole Arbitrator underlines that whether there is sufficient evidence to establish an ADRV must be considered separately in each individual matter.
117. In the following, the Sole Arbitrator will consider whether there is sufficient evidence in the present matter to conclude, to the Sole Arbitrator’s comfortable satisfaction, that the Athlete did violate Rule 32.2(b) of the 2012-2013 IAAF Rules.

ii. *The General Reliability of the EDP Documents*

118. As noted above, the Athlete has vehemently challenged the reliability of the EDP documents. In brief, the Athlete's position is based on the fact that the EDP documents have been obtained from images of Dr Rodchenkov's hard drives that were provided to the IP by the US authorities without any statement as to their chain of custody. The Athlete further submits that the EDP documents then went through an extensive process including translation, redaction, modification, printing, and scanning. According to the Athlete, it is therefore impossible to ascertain the origin, authenticity, and contemporaneous nature of the documents.
119. Both parties have relied on experts with regard to the reliability of the EDP documents. Ms Wilson's key testimony is that the crucial forensic principles have not been followed in obtaining and handling the evidence. She has concluded that "*it is impossible to ascertain their origin and authenticity*" and that the documents "*do not represent evidence collected in a forensically sound manner*". As a response to Ms Wilson's expert report, Mr Sheldon examined altogether 35 native EDP documents (11 e-mails and 24 documents) and concluded that "*all the messages are authentic (...) and there are no signs of changes to the Internet Transport headers*". He also stated that "*all the mails were created between the 19th July 2012 and the 30th April 2015*". He did not notice any signs of tampering in the documents either. Mr Rundt criticised Mr Sheldon's report by noting that "*[t]he authenticity and the date of creation of the documents and emails cannot be established in a sound forensic manner based on the information that was available to Mr. Sheldon*".
120. The Sole Arbitrator summarises the expert testimony by noting that the EDP documents have not been obtained in a sound forensic manner. It is also undisputed between the experts that electronic files can be forged easily, e.g. by manipulating the clock on the computer. It follows that the Sole Arbitrator cannot rule out the possibility that the e-mails or documents, or some of them, have been fabricated.
121. The conclusion that the documents may have been tampered with does not, however, mean that they in fact are manipulated. Therefore, the Sole Arbitrator has analysed the evidence before him more extensively and observed that there are indications of the reliability of the EDP documents.
122. First, when specifically asked, the Athlete's expert witnesses Ms Wilson and Mr Rundt admitted that they have not found indications of manipulation.
123. Second, the Sole Arbitrator has been provided with hundreds of EDP documents, mainly e-mails. Although fabricating all of them would not have been impossible, the Sole Arbitrator is persuaded by the IAAF's argument that it would have been an immense task. The quantity of EDP e-mails is a strong indication that they are contemporaneous to the relevant events.
124. Third, the Sole Arbitrator also observes that a number of individual EDP documents corroborate the content of other EDP documents. Fabricating this logical web of files with thousands of details regarding different sports, athletes, dates, locations, substances, sample

codes, and comments would have been an even more challenging exercise than the pure creation of the extensive record.

125. Fourth, and as will be shown in more detail below, the content of many documents, including both the London and Moscow Washout Schedules, has been shown to accurately reflect the doping habits of a number of Russian athletes. The fact that Dr Rodchenkov turned over his files to the US authorities before the results of the reanalysis of the samples provided at the London Olympic Games were available is a strong indication that the content of the London Washout Schedules is based on true analysis results of the Moscow Laboratory.
126. The Sole Arbitrator concludes that in general, the EDP documents can be considered reliable in the meaning of Rule 33.3 of the 2012-2013 and 2016-2017 editions of the IAAF Rules. Put differently, unless there is a valid reason to find that the content of a particular document is not reliable, it may be used as evidence on an ADRV. The Sole Arbitrator proceeds to examine whether the London Washout Schedules invoked by the IAAF, together with other evidence, comfortably satisfy the Sole Arbitrator that the Athlete committed an ADRV in 2012 and/or 2013.

iii. The Reliability of the London Washout Schedules invoked by the IAAF

127. As noted above, the IAAF relies principally on the three London Washout Schedules. The tables are somewhat different when compared to each other, but they all contain at least (1) numbers which refer to the 4-digit lab codes, (2) numbers which refer to the 7-digit sample codes, (3) a date, (4) gender, and (5) a list of prohibited substances connected to some of the sample numbers. The lines of the London Washout Schedules concerning the Athlete contain the following information:

“8772	2729653	m	16.07.2012	Novogorsk	T/E = 4.2, desoxymethyltestosterone 180000”
“9086	2729649	m	21.07.2012	T/E = 4.2; desoxymethyltestosterone 120,000”	
“9326	2727843	m	27.07.2012	Novogorsk – International Olympic Committee (IOC)	T/E = 4.2”
“9337	2730798	M	27.07.2012	Novogorsk	T/E = 4; desoxymethyltestosterone 60,000”

128. According to the IAAF, the prohibited substances listed in the table had been detected in the respective samples by the Moscow Laboratory in the initial screening. However, because of the DPM, the samples had been automatically reported as negative in ADAMS.

129. In the following, the Sole Arbitrator will assess whether the London Washout Schedules should be considered reliable, thereby indicating that the Athlete has used a prohibited substance in violation of Rule 32.2(b) of the 2012-2013 IAAF Rules in July 2012. The assessment entails an evaluation of the alleged unreliability of the ADAMS data, which is conflicting with the London Washout Schedules.
130. The Athlete expressly admits that he has provided the four samples in question on 16, 21, and 27 July 2012, and that the sample numbers 2729653, 2729649, 2727843, and 2730798, respectively, are correct. Thus, the issue boils down to the question of which one of the two conflicting sets of evidence should be held reliable: (1) the ADAMS entries showing that the four samples were negative and indicating lower T/E ratios than the London Washout Schedules or (2) the London Washout Schedules, which suggest that the Athlete had used, knowingly or unknowingly, banned substances. The IAAF has disputed the accuracy of the ADAMS entries based essentially on the findings described in the IP Reports, whereas the Athlete has challenged the reliability of the London Washout Schedules and invoked his clean ADAMS record.
131. Customarily, a hearing panel would adhere to the information in the official documents and entries made by different anti-doping authorities. However, the present matter cannot be considered a normal anti-doping case. Broadly speaking, the allegations against the Athlete based on the London Washout Schedules relate to extensive doping practices in Russian sports in the 2010s. As noted above, it has been established in a number of other connections that the Russian anti-doping regime was at that time in part corrupted, which eventually led to various different consequences, including the revocation of the accreditation of the Moscow Laboratory and the declaration that RUSADA was non-compliant in November 2015. Therefore, the Sole Arbitrator finds that the ADAMS entries by the Moscow Laboratory do not *per se* enjoy unreserved reliability. The assessment relating to the reliability of the evidence before a hearing panel must be made in light of all the facts and circumstances of an individual case.
132. The IAAF has submitted altogether 35 EDP documents in their native format. Nine of them are native London Washout Schedules, including three London Washout Schedules containing the codes of the Athlete's four samples (EDP0019, EDP0021, and EDP0024). Put differently, the Sole Arbitrator has had at his disposal electronic copies of the Excel spreadsheets in question instead of mere scans of redacted documents. The metadata (properties) of the Excel file containing information on the Athlete's sample 2729653 of 16 July 2012 includes the following particulars:

<i>"Company</i>	<i>Moscow Antidoping Lab</i>
<i>Related Dates</i>	
<i>Last Modified</i>	<i>19.07.2012 (...)</i>
<i>Created</i>	<i>19.07.2012 (...)</i>
<i>Last Printed</i>	<i>19.07.2012 (...)</i>

Related People

(...)

Author

Tim Sobolevsky

Last Modified By

Tim Sobolevsky".

133. The properties of the two other relevant native London Washout Schedules reveal similar facts. According to the metadata of the Excel file containing information on the Athlete's sample 2729649 collected on 21 July 2012, the file had been created on 23 July 2012 and last modified on the same date. The author and the last modifier of the file is Dr Sobolevsky.
134. The properties of the third native London Washout Schedule containing remarks on the Athlete's samples 2727843 and 2730798 of 27 July 2012 indicate that the document had been created on 28 July 2012 and was last modified on the same date. The author and modifier of the document was, once again, Dr Sobolevsky.
135. Based on the above, the Sole Arbitrator finds that the three native London Washout Schedules and their metadata are a strong indication that the London Washout Schedules have been drafted soon after the sample taking and that they have been created by Dr Sobolevsky, who worked in Dr Rodchenkov's team in the Moscow Laboratory. His name also appears in two e-mails copied to the Second IP Report (pp. 53 and 55), which is yet another indication that he was involved in the DPM. Conversely, the metadata does not support the view that the London Washout Schedules were manipulated by Dr Rodchenkov or drafted or modified at a significantly later date.
136. The Sole Arbitrator also draws attention to three native e-mails submitted by the IAAF. These are e-mails sent by Dr Sobolevsky on 19 and 20 July 2012. A different London Washout Schedule was attached to each e-mail. The first two contained a London Washout Schedule showing, among other things, the analytical results of the Athlete's sample 2729653 collected on 16 July 2012.
137. The properties of each e-mail indicate that they are contemporaneous with the London Washout Schedules and the relevant doping tests, i.e. from July 2012. In other words, they do not seem to be fabricated at a later date.
138. In addition to the metadata, the Sole Arbitrator has taken note of the content of the e-mails. In the first e-mail with the heading "*athletics*", Dr Sobolevsky writes "*here they are, the heroes*". In the second e-mail with the heading "*marked athletics*", he writes that "*here I marked samples (the most remarkable ones) which YD requested to get the names for first. Apart from that, it's the same list as in the previous file*". In the third e-mail with the heading "*athletics kislodovsk*" on 20 July 2012, he writes that "*the situation in Kislodovsk is more satisfactory but it would be best to check those who have something once again*".
139. The content of the e-mails appears to indicate that their recipient was expecting to receive them and the attachments thereto. Thus, more than one person was involved in the operation. The e-mails also suggest that the attached documents concerning "*samples*" – the London

Washout Schedules – list tested athletes and their samples and that some samples have produced unsatisfactory analytical results. Finally, the e-mails show that the analytical results of the athletes’ samples had been closely monitored in July 2012.

140. These logical e-mail cover letters support the authenticity of the London Washout Schedules. The IAAF has established who created the London Washout Schedules as well as the related e-mails and when they were created. The purpose of said documents can also be inferred from the content of the spreadsheets and the e-mails. The Sole Arbitrator is persuaded by the IAAF’s argument that sending a spreadsheet with untrue remarks relating to dubious substances by a contemporaneous e-mail from the Moscow Laboratory would not make sense.
141. In addition to the documentary evidence, the IAAF’s case is based in part on the testimony of Dr Rodchenkov. He appeared as a witness before the Sole Arbitrator and confirmed that the documents at EDP0019 to EDP0027 are the London Washout Schedules that were produced by the experts from Moscow Laboratory in the lead-up to the London Olympic Games. He testified that Dr Sobolevsky drafted the tables after Dr Rodchenkov travelled to the London Olympic Games and provided the lists to a liaison person. Finally, Dr Rodchenkov testified that the tables recorded the prohibited substances that had been detected in the samples and that the numbers next to the prohibited substances reflect the peak height, which provides an approximate estimation of the concentration of the substance or metabolite. According to Dr Rodchenkov, 60,000 means that the concentration is around 6 ng/ml.
142. The Athlete has challenged the reliability of Dr Rodchenkov’s testimony on various grounds relating, *inter alia*, to his motives, attributes, and circumstances. The Athlete has put forth that Dr Rodchenkov is a completely unreliable witness and no value whatsoever should be given on his testimony. In the Athlete’s view, Dr Rodchenkov “*is anything but a credible witness*”, whose “*testimony has already been found to be ‘mere hearsay’ and ‘uncorroborated by evidence’ by several CAS panels*”.
143. The Sole Arbitrator notes that some factors relating to Dr Rodchenkov’s character and circumstances call for a particularly critical assessment of the content of his testimony. The Sole Arbitrator is also conscious that some CAS panels have attached only limited weight to some aspects of Dr Rodchenkov’s testimony (see e.g. CAS 2017/A/5379 para. 752 and para. 822-823, CAS 2017/A/5422 para. 733). This has occurred when Dr Rodchenkov’s testimony has been in conflict with or uncorroborated by other evidence. However, the Sole Arbitrator does not deem that Dr Rodchenkov’s testimony is completely unreliable, or that it should not be given any significance whatsoever. In particular, where his testimony is consistent with other evidence of the case, it should not be left unnoticed.
144. With respect to the London Washout Schedules, the Sole Arbitrator finds that Dr Rodchenkov’s testimony is consistent with the contents of the London Washout Schedules and their properties. The relevant information, persons, and dates in Dr Rodchenkov’s testimony match the documents.

145. In conclusion, the Sole Arbitrator finds that, based on the properties and the content of the London Washout Schedules, they appear to be reliable. However, both Parties have presented a number of additional arguments and evidence to support their respective positions. Those arguments and evidence will be examined in the following.
- iv. The Negative Analysis Result of the Athlete's Sample of 5 July 2012*
146. The Athlete has invoked his untarnished doping test history, supported with an extract from ADAMS. The Sole Arbitrator observes that, according to the ADAMS extract submitted by the Athlete, he has in June, July, and August 2012 only provided one sample in addition to the samples listed in the London Washout Schedules (16, 21, and 27 July 2012) and provided at the London Olympic Games (7 August 2012). The additional sample collection took place in Moscow on 5 July 2012. None of the abovementioned samples tested positive.
147. The Sole Arbitrator agrees that a negative analysis result shall be considered an indication that an athlete has been “clean” at the time of sample collection. This is also the clear starting point of the global anti-doping regime. However, when assessing the significance of a negative analysis result, a number of important reservations and limitations must be kept in mind.
148. First, the integrity, independence, reliability, and quality of the laboratory and its personnel are indispensable preconditions for any conclusions based on an analytical result. Indeed, it is commonly known that a number of WADA-accredited laboratories have not been compliant with the relevant stipulations and therefore, have been suspended by WADA. Further, with regard to the Moscow Laboratory in particular, it was suspended by WADA due to its participation in the Russian doping scheme.
149. Second, a negative analysis result does not evidence that the athlete in question has never used, or will not use, a prohibited substance. It is in the public domain that for a number of prohibited substances, the detection window only lasts days instead of weeks or months. According to Dr Rodchenkov, the detection window for DMT is approximately ten days after the last dose. Any conclusions on an athlete's use of prohibited substances beyond the relevant detection window may be unwarranted. In fact, a negative analysis result does not even comprehensively show that there are no prohibited substances or their metabolites in an athlete's sample at the time of the analysis. Indeed, laboratories may not detect all prohibited substances in samples, especially if the concentration of the substance in question is low. Even if an athlete tests negative, there may be prohibited substances in his or her system.
150. Based on the above grounds, the Sole Arbitrator notes that the negative sample of 5 July 2012 collected prior to the samples recorded on the London Washout Schedules is not suitable for establishing that the Athlete had not used prohibited substances later on. Therefore, no relevant conclusions can be made based on the sample – or any other prior sample – in the present case.

v. *The Inconsistency of the Results of the Two Doping Tests of 27 July 2012*

151. The Athlete has also pointed out that one of the London Washout Schedules contains the results of two doping tests carried out on the same day, 27 July 2012, and that their results significantly differ from each other. According to the Athlete, the different results are an indication of the table being unreliable.
152. It is correct that according to the London Washout Schedule in question, the analytical results of the two samples collected within hours from each other are different. Most importantly, the table indicates that the test authorised by the IOC was “clean”, whereas the test authorised by RUSADA revealed the presence of “*desoxymethyltestosterone 60,000*”. In addition, according to the London Washout Schedule, the T/E ratio was different in the two samples (“4.2” and “4”).
153. The Sole Arbitrator accepts that the two samples collected within three hours’ time should not produce different results, considering in particular that, according to another London Washout Schedule, the Athlete’s previous sample from 21 July 2012 – i.e. six days earlier – contained “*desoxymethyltestosterone 120,000*”.
154. There may be various explanations to this anomaly. First, the laboratory analysis may have failed with regard to either sample. Second, the content of the London Washout Schedule may be incorrect unintentionally or on purpose. Indeed, both samples were analysed by the Moscow Laboratory, which has been found unreliable by the IP and the Schmid Commission. Third, the Athlete’s sample 2727843 may have been swapped for a clean one before the laboratory analysis. It has been established by the doping control forms of 27 July 2012 that the IOC sample 2727843 was collected by RUSADA, and Dr Rodchenkov testified that RUSADA substituted all IOC samples during the sample collection. As such, sample swapping has been identified by the IP as a means of manipulating the doping control system in Russia after 2011: “*These methods included (...) the involvement of the Russian Anti-Doping Agency (...) in corrupting Doping Control Officers (...) who would (...) appear to take samples from the athlete while allowing others to provide the actual sample instead; and allowing athletes to provide a previously collected sample known to be clean*” (the Second IP Report p. 50).
155. The Sole Arbitrator concludes that he has not been able to identify the reason for the disturbing discrepancy between the analytical results of the two samples collected from the Athlete in the morning of 27 July 2012 in a reliable fashion. However, the Sole Arbitrator finds that this anomaly alone does not suffice to undermine the general reliability of the EDP documents, including the three London Washout Schedules, and the reliability of their entries concerning the Athlete.

vi. *The Athlete’s Negative Sample Provided in London on 7 August 2012*

156. The Athlete has strongly invoked the fact that his sample collected on 7 August 2012 at the London Olympic Games tested negative for all prohibited substances not only in 2012 but also in the reanalysis carried out with improved analytical methods.

157. The Sole Arbitrator acknowledges that the Athlete has not provided a positive urine sample at the London Olympic Games. The negative result was confirmed subsequent to a reanalysis by the Lausanne Laboratory on 6 December 2016. The Sole Arbitrator has no reason to suspect the reliability and correctness of the report.
158. However, as discussed above, a negative result on 7 August 2012 does not in itself evidence that the Athlete did not have DMT in his system 10-20 days earlier, i.e. on 16 July 2012, 21 July 2012, and/or 27 July 2012, as indicated by the London Washout Schedules. The Athlete, who invokes the results of the reanalysis of his sample provided on 7 August 2012 as an indication of the unreliability of the London Washout Schedules, has the onus to prove that his sample collected on 7 August 2012 would necessarily have been positive if any or all of the London Washout Schedules were correct (see e.g. CAS 2007/A/1380, para. 25).
159. The Athlete has failed to discharge this burden. He has not submitted expert testimony or other evidence supporting his argument. The Sole Arbitrator further notes that the London Washout Schedules in fact indicate that the concentration of DMT in the Athlete's samples declined 60,000 units in every 5-6 day period, and that the Athlete was thus "clean" starting approximately from 2 August 2012. Finally, as confirmed in the Second IP Report (p. 71), the very purpose of the washout system was to ensure that Russian athletes did not provide positive samples in international competitions.
160. The Sole Arbitrator also observes that after a reanalysis of their samples collected at the London Olympic Games, ten other Russian athletes eventually tested positive for dehydrochlormethyltestosterone ("DHCMT"), whose detection window was significantly extended with the improved analysis method developed by Dr Rodchenkov and Dr Sobolevsky. However, as presented to the Sole Arbitrator, no such enhanced analysis method or increased sensitivity is available for DMT, i.e. the substance connected to the Athlete in the London Washout Schedules. The IAAF has not even alleged that the Athlete used DHCMT.
161. Based on the above considerations, the Sole Arbitrator finds that the lack of a positive sample at the London Olympic Games does not signify that the Athlete had not used DMT in July 2012, as indicated by the London Washout Schedules.

vii. The Analytical Results of Other Russian Athletes

162. The IAAF has also based its view on the reliability of the London Washout Schedules on the fact that Russian athletes whose samples appear as positive in the London Washout Schedules and originally tested negative in London have subsequently been found to have committed ADRVs based on the reanalysis of the London samples. The Athlete has put forth that other athletes' results have no bearing in the assessment of the Athlete's ADRV.
163. The Sole Arbitrator agrees with the Athlete that the analytical results of other athletes are not exhaustive evidence or even directly relevant in assessing whether the Athlete has committed an ADRV. However, the data may be used in evaluating the reliability of both the London

Washout Schedules and the ADAMS entries. By way of example, in CAS 2017/A/5379, the CAS panel placed some weight on the fact that the names of certain other athletes did not appear on the Duchess List (para. 751).

164. The Sole Arbitrator observes that there is (1) a solid negative correlation between the negative ADAMS reports and the content of the London Washout Schedules as well as (2) a strong positive correlation between the content of the London Washout Schedules and the positive analytical results of the reanalysis of the samples provided by the same Russian athletes in connection with the London Olympic Games.
165. Indeed, the IAAF has submitted ten negative ADAMS reports regarding samples given by Russian athletes other than the Athlete in Russia in July 2012. However, these samples appear on the London Washout Schedules as positive, among other things, for Oral-turinabol, i.e. DHCMT. The sample codes, collection dates, and locations of the sample collections in the ADAMS reports perfectly correspond to the London Washout Schedules. Thus, the two sources can be reliably compared.
166. The following table illustrates that the negative ADAMS entries are in contradiction with the London Washout Schedules.

	Negative ADAMS report (sample code, date, city)	London Washout Schedules (content, EDP code)
1.	2729874, 16 July 2012, Novogorsk	<i>“oral-turinabol 30000”</i> (EDP0019_T)
2.	2729859, 16 July 2012, Novogorsk	<i>“oral-turinabol 10000, desoxymethyltestosterone 250000, blood transfusion? (phthalates)”</i> (EDP0019_T)
3.	2730585, 16 July 2012, Novogorsk	<i>“oral-turinabol 20000”</i> (EDP0019_T)
4.	2727556, 17 July 2012, Kislovodsk	<i>“oxandrolone 20000, oral-turinabol 20000”</i> (EDP0020_T)
5.	2727809, 21 July 2012, Novogorsk	<i>“methasterone 230,000; oral-turinabol 10,000; desoxymethyltestosterone 30,000”</i> (EDP0021_T)
6.	2729827, 25 July 2012, Novogorsk	<i>“oral-turinabol 4,000”</i> (EDP0023_T)
7.	2728963, 25 July 2012, Novogorsk	<i>“methasterone 160,000; oral-turinabol 400,000; oxandrolone 5,000; desoxymethyltestosterone 15,000”</i> (EDP0023_T)
8.	2728437, 25 July 2012, Novogorsk	<i>“methasterone 90,000; oral-turinabol 12,000; desoxymethyltestosterone 10,000”</i> (EDP0023_T)

9. 2728058, 25 July 2012, Moscow “oral-turinabol 15,000” (EDP0023_T)
10. 2729145, 29 July 2012, Podolsk “oral-turinabol 200,000; oxandrolone 5,000”
(EDP0025_T)

167. In addition, these ten Russian athletes who, according to the London Washout Schedules, gave positive samples prior to the London Olympic Games – which were however reported as negative in ADAMS – have at the London Olympic Games given samples that were found positive for long-term metabolites of DHCMT in the subsequent reanalysis. The Sole Arbitrator finds that this striking combination of evidence is a strong indication that the negative ADAMS entries were in fact false and that, at least in these ten cases, the Moscow Laboratory applied the DPM.

viii. The Duchess List and the Legkov Award

168. The Athlete has also defended himself by referring to the findings made by the CAS panel in the so-called Legkov case (CAS 2017/A/5379), where the panel upheld the athlete’s appeal and found that he had not committed an ADRV in connection with the Sochi Olympic Games. The Legkov case was also based on IP Reports, EDP material, and Dr Rodchenkov’s testimony, in addition to forensic evidence.
169. The Athlete has underlined that, according to said CAS award, finding an athlete guilty would require cogent evidence on an athlete’s personal wrongdoing. One piece of the IOC’s evidence was the Duchess List (EDP0055), which Dr Rodchenkov described as an index of protected athletes who consumed the Duchess Cocktail. The panel found that presence on the Duchess List together with Dr Rodchenkov’s corroborating testimony did not establish to the panel’s comfortable satisfaction that the athlete had used a prohibited substance during the Sochi Olympic Games. Mr Legkov’s urine samples did not contain abnormal salt levels and there was no evidence of the presence of any foreign DNA in his sample.
170. The Sole Arbitrator accepts that the Legkov case and the present case do have some similarities. However, there are also various factual and legal differences, which considerably weaken the significance of the findings of the Legkov award in this case.
171. The Sole Arbitrator observes that both cases are, in part, based on lists containing Russian athletes’ names, but the lists are nevertheless very different from each other. First of all, the lists are from different years and relate to different sports events. With regard to their content, the Duchess List presents sport disciplines and athletes’ names, whereas the London Washout Schedules contain sample codes, sample collection dates, as well as names and alleged concentrations of prohibited substances. The London Washout Schedules cannot be characterised as lists merely identifying potential Russian medallists, as the athlete described the Duchess List in the Legkov case.
172. Based on the above, the Sole Arbitrator notes that only very limited value may be attached to the findings of the CAS panel in the Legkov award in the present case.

ix. Conclusion on an ADRV in July 2012

173. The Sole Arbitrator notes that there is considerable evidence supporting the IAAF's position on the reliability of the London Washout Schedules and, conversely, on the unreliability of the ADAMS entries carried out by the Moscow Laboratory.
174. Because the Sole Arbitrator has had at his disposal the native London Washout Schedules and three native e-mails in connection with which the London Washout Schedules had been sent, as well as the entirety of the EDP e-mails, the Sole Arbitrator has not needed to rely on the IP Reports to a substantial extent. Therefore, it has not been necessary to analyse in detail whether the McLaren Investigation was objective and comprehensive or relied on sufficient and reliable evidence. Nor has it been necessary to analyse the significance of the facts that the IP Reports do contain some errors and that some international sports federations have not initiated disciplinary measures against Russian athletes based on the IP Reports. However, the Sole Arbitrator notes that, generally speaking, the relevant parts of the IP Reports seem to coincide with the evidence provided to the Sole Arbitrator in the course of this arbitration, thereby strengthening the IAAF's arguments.
175. In conclusion, based on the above grounds and having duly considered the arguments put forward by each Party, the Sole Arbitrator finds that the entries concerning the Athlete in the London Washout Schedules shall be considered reliable and the respective ADAMS entries by the Moscow Laboratory inaccurate. The Sole Arbitrator finds that the IAAF has established, to the comfortable satisfaction of the Sole Arbitrator, that the Athlete has committed an ADRV in July 2012 prior to the London Olympic Games in violation of Rule 32.2(b) of the 2012-2013 IAAF Rules by using DMT.

B. Did the Athlete Commit an ADRV Prior to the Moscow World Championships in 2013?

176. In addition to 2012, the IAAF asserts that the Athlete also committed an ADRV in summer 2013. The IAAF primarily relies on the Moscow Washout Schedules, i.e. Excel spreadsheets allegedly containing data on the Athlete's unofficial urine samples and the analytical findings thereof. The Athlete denies ever having provided an unofficial urine sample or having used prohibited substances. The Athlete's position implies that the Moscow Washout Schedules are either fabricated or accidentally incorrect.
177. Generally speaking, the Athlete's overall defence is similar to the one relating to the London Washout Schedules, i.e. he disputes the reliability of the EDP documents and the credibility of Dr Rodchenkov's testimony. In addition, the Athlete has presented a number of more detailed facts and arguments pertaining specifically to the Moscow Washout Schedules in support of his position.
178. As noted above, the existence of a wide doping system in Russia in the 2010s has been confirmed in a number of different documents. Moreover, the Sole Arbitrator has found in this award that the EDP documents shall, in general, be considered reliable. Therefore, the

Sole Arbitrator will, in the following, focus on the Parties' arguments relating specifically to the Moscow Washout Schedules.

a. *The Absence of Details Relating to the Sample Taking and Analysis*

179. The Athlete does not dispute that he has provided the four samples recorded on the London Washout Schedules. With regard to the Moscow Washout Schedules, the Athlete's position is the opposite. The Athlete has strongly disputed ever having taken any prohibited substances and having provided any unofficial urine samples. He invokes the fact that many details relating to the alleged use of prohibited substances, collection of unofficial samples, and their analysis is missing. The Athlete has stated that there is no explanation or evidence as to when, where, and how he has allegedly used prohibited substances, who collected the samples, where the samples were collected, or who conducted the analysis, or evidence proving that a particular sample belongs to a particular athlete. The Athlete underlines the absence of "SAVE" e-mails concerning the Athlete and stresses that *"anyone could have written Mr Ukhov's name next to these samples, which may or may not, have been collected at all"*.
180. It is correct that no eyewitness has confirmed that the Athlete has in fact taken prohibited substances or provided any unofficial urine samples. Nor has the Sole Arbitrator been provided with details of the collection or analysis process. There is no doping control form, chain of custody form, laboratory analysis report, or for that matter, any other official document at the Sole Arbitrator's disposal. There are no "SAVE" e-mails concerning the Athlete, either. There are only the alleged analytical results of the purported unofficial urine samples recorded on an Excel spreadsheet, i.e. a Moscow Washout Schedule.
181. Having said that, the Sole Arbitrator reiterates that, according to the 2012-2013 and 2016-2016 IAAF Rules, an ADRV may be established *"by any reliable means"*. It follows that the IAAF does not need to establish the details of the sample taking or analytical process to prevail with respect to commission of an ADRV. It suffices that the IAAF establishes the ADRV to the comfortable satisfaction of the hearing panel.
182. The Athlete's denial and lack of details on the sample taking and analysis does not, as such, lead to a conclusion that no ADRV has taken place. However, the Athlete's testimony and the absence of a full set of information are factors that the Sole Arbitrator shall seriously take into account when assessing whether the IAAF has discharged its burden of proof. At the same time, the Sole Arbitrator is mindful that one of the purposes of the Russian doping system was to conceal the use of prohibited substances. Therefore, the evidence before the Sole Arbitrator may not be complete in all aspects.

b. *The Properties of the Moscow Washout Schedules*

183. The Athlete has questioned the origin of the Moscow Washout Schedules. The IAAF has invoked the properties of the Excel documents, which according to the IAAF show that the documents are contemporaneous and drafted by the Moscow Laboratory.

184. The Sole Arbitrator has been provided with 11 native Moscow Washout Schedules. The content of the Moscow Washout Schedule primarily invoked by the IAAF (EDP0028) contains the following properties:

“Company Moscow Antidoping Lab

Related Dates

Last Modified 21.08.2013 (...)

Created 04.07.2013 (...)

Last Printed 30.07.2013 (...)

(...)

“Author Tim Sobolevsky

Last Modified By [Mikhail Grigorevitch i.e. Dr Rodchenkov]”.

185. The properties of other Moscow Washout Schedules contain similar information, i.e. that the tables were modified by Dr Rodchenkov in summer 2013.
186. Dr Rodchenkov testified that the tables in question are the Moscow Washout Schedules *“that Dr Sobolevsky created in the lead-up to the Moscow World Championships”*. He added that he worked on the table after Dr Sobolevsky had supplied the data. As explained elsewhere in this award, the experts of the IAAF and the Athlete have examined the native documents and have not found any traces of tampering.
187. Based on the above, the Sole Arbitrator finds that the Moscow Washout Schedules appear to be contemporaneous to the events and not fabricated. However, this finding does not mean that the content of the schedules concerning the Athlete is correct. In the following, the Sole Arbitrator will assess the reliability of the content of the Moscow Washout Schedules in light of the arguments presented by the Parties.

c. *The Content of the Moscow Washout Schedules*

188. As noted above, the IAAF has primarily invoked the Moscow Washout Schedule that is available in the EDP database under code EDP0028. It contains the following information related to the Athlete:

<i>“Ukhov 28/06</i>	<i>T/E = 6.7, desoxymethyltestosterone (700 000), prohormones</i>
<i>Ukhov 02/07</i>	<i>T/E = 6.6, traces of DMT metabolite (60000)</i>
<i>Ukhov 06/07</i>	<i>T/E = 7, traces of DMT metabolite (20000)</i>
<i>Ukhov 17/07</i>	<i>T/E = 5, all clear</i>
<i>Ukhov 30/07 out-of-competition</i>	<i>T/E = 11, steroid profile failed”</i>

189. The Sole Arbitrator observes that the Athlete's name appears on the document. In the Sole Arbitrator's view, the fact that the table contains the Athlete's name instead of a code significantly decreases the possibility that the Athlete was accidentally mistaken for another athlete. The likelihood of a mistaken identity is also decreased by the fact that the Athlete's name is recorded on the table no less than five times. Moreover, the Sole Arbitrator observes that all analytical results attached to the Athlete's name contain a high T/E ratio, which the Athlete undisputedly naturally has. This fact even further decreases the probability of an unintentional mixing of these five samples with the samples of another athlete. In summary, the Sole Arbitrator finds that, in light of the content of the Moscow Washout Schedules, the likelihood that the Moscow Laboratory has erred in the identity of the Athlete is very small.
190. With regard to the correctness of the content of the Moscow Washout Schedules, they indicate that the Athlete has used DMT. In light of the finding that the Athlete also used DMT in the previous year, and even though such conclusion is not direct evidence of his *modus operandi* in 2013, the entries in the Moscow Washout Schedule cannot be considered unconvincing, either.
191. Considering that the Moscow World Championships took place from 10 to 18 August 2013, the entries in the Moscow Washout Schedules concerning the concentration of DMT seem to be somewhat logical and thus corroborating the reliability of the document. On 28 June 2013, the Athlete's sample contained 700,000 units of DMT, which was converted into a decreasing concentration of DMT metabolites on 2 and 6 July 2013. On 17 and 30 July 2013, no traces of DMT or its metabolites were detected. As such, none of the Parties has addressed the half-life, excretion rate, or the shape of the excretion curve of DMT in detail.
192. With regard to entries concerning other athletes appearing on the Moscow Washout Schedules, the Sole Arbitrator notes that, according to EDP0036, a Russian heptathlete provided three samples positive for oxandrolone between 30 June 2013 and 18 July 2013. An official sample provided by the same athlete on 11 July 2013 was also found positive for oxandrolone, but it was, according to a table submitted to the Sole Arbitrator, subject to a SAVE order and thus marked negative in ADAMS. Although the markings and findings relating to another athlete are not, as such, evidence on the Athlete's ADRV, they however indicate that the contents of the Moscow Washout Schedules seem to be, generally speaking, correct.
193. Based on the above, the Sole Arbitrator notes that the contents of the Moscow Washout Schedules support the finding that they are reliable in general and with respect to the entries concerning the Athlete.

d. The Athlete's Official Doping Tests in Summer 2013

194. The Athlete has pointed out that he has provided three official doping tests on 25, 26, and 29 July 2013. According to ADAMS, these tests did not yield positive results.

195. The Sole Arbitrator first notes that ADAMS contains the following entry with respect to each of these three samples: “*Urine: No Result*”. The Parties have not elaborated the significance of this note in relation to the entry “*Urine: Negative*” also appearing in the ADAMS extract various times.
196. The Sole Arbitrator goes on to note that the official samples of 25 and 29 July 2013 were domestic Russian tests, i.e. the tests were authorised by the Russian Ministry of Sport, collected by RUSADA, and analysed by the Moscow Laboratory. Considering that representatives from all these three organisations have been found to be part of the Russian doping system not only by the IP but also by the Schmid Commission, the Sole Arbitrator does not deem it justified to rely solely on the ADAMS entries concerning these samples.
197. Unlike the samples of 25 and 29 July 2013, the third official sample, collected on 26 July 2013, was authorised by the IAAF and collected by the Swedish company International Doping Tests & Management AB. Put differently, it was not a purely domestic Russian doping test. The Sole Arbitrator does not have a reason to suspect the integrity of the sample collection taken place on 26 July 2013. However, it is important to note that the sample was analysed by the Moscow Laboratory, which has been part of the doping scheme. Therefore, the ADAMS entry “*Urine: No Result*” cannot be considered as an uncontested indication that the sample in question did not contain prohibited substances.
198. With regard to the Athlete’s samples provided in the Moscow World Championships on 11 and 15 August 2013 (blood and urine, respectively), the Sole Arbitrator notes that these samples do not evidence that the Athlete did not use prohibited substances in July 2013, nor that his samples of July 2013 did not contain DMT as indicated by the Moscow Washout Schedules. The Sole Arbitrator refers to the reasoning presented in addressing the significance of the negative reanalysis result of the Athlete’s sample provided at the London Olympic Games. Further, according to the ADAMS extract, the urine sample of 15 August 2013 yielded “*No Result*” and both samples were collected by RUSADA, which facts undermine the reliability of the ADAMS entries.

e. *Different Versions of the Moscow Washout Schedules*

199. The Athlete has pointed out that there is a large number of different Moscow Washout Schedules that contain numerous discrepancies. In addition, the Athlete has pointed out that the dates in the file names occasionally precede the dates of the samples allegedly addressed in the table. The Athlete’s conclusion is that the documents have been edited and amended many times and lack any probative value.
200. The Sole Arbitrator does not agree with the Athlete’s position. The mere fact that there are different versions of the Moscow Washout Schedules does not suffice to deem them unreliable. It becomes clear by studying the different versions of the schedule that they have been updated in summer 2013 by mostly adding new information to the schedule. Dr Rodchenkov also testified that the schedules were updated to reflect the progress of the washout testing. In addition, the layout of the schedule has been modified.

201. The Athlete has pointed out some discrepancies between the different versions of the schedule. However, it is important to note that these inconsistencies do not concern information relating to the Athlete. Nor can they be held as an indication that the schedules are a result of pure fiction or generally unreliable. With regard to the discrepancies between the dates included in the file names and the dates in the schedules indicating the timing of each sample collection, the Sole Arbitrator cannot rule out the simple explanation that the file names were not updated simultaneously with the content of the document.
202. In conclusion, the Athlete's argument that the Moscow Washout Schedules lack any probative value because of the number of different versions of the schedules, the limited number of inconsistencies in the schedules, and the illogical file names do not alone suffice to deem the schedules unreliable.

f. The Athlete's Participation in Kazan Summer Universiade

203. The Athlete has invoked the fact that he participated in the Summer Universiade in Kazan, Russia, from 6 to 10 July 2013. The Athlete puts forth that had he used prohibited substances in July 2013, he would not have been sent to compete in this international event.
204. The Sole Arbitrator is not persuaded by this argument. As noted above, there is evidence indicating that a Russian heptathlete was allowed to participate and did participate in the Summer Universiade in Kazan in spite of the fact that she tested positive for oxandrolone before this event. In fact, she also tested positive at the Universiade but was "saved" at that time. The Second IP Report addresses the functioning of the Russian cover-up scheme in place at the Universiade (pp. 85-88).
205. Furthermore, the Sole Arbitrator notes that, according to the Moscow Washout Schedule, the Athlete's sample of 6 July 2013 contained 20,000 units, i.e. approximately 2 ng/ml of DMT. Based on the information of the Moscow Washout Schedule, such amount would disappear from the Athlete's system in a couple of days. According to the Second IP Report, the Summer Universiade lasted from 7 to 16 July 2013. Thus, the prohibited substance may have disappeared from the Athlete's system during the very first days of the Universiade.
206. In light of the above, the Sole Arbitrator does not find that the Athlete's participation in the 2013 Summer Universiade, as such, undermines the reliability of the Moscow Washout Schedules.

g. Lack of Motive to Provide Unofficial Samples and the Prohibited Substances Detected

207. The Athlete has presented that, considering that he gave official samples in July 2013, "*it is extremely unlikely and makes no sense for him to provide the 'unofficial samples'*".
208. The Sole Arbitrator does not find this argument convincing either. The Sole Arbitrator notes on a general level that if an athlete is asked to provide a sample, it is unlikely that the athlete

would refuse from that irrespective of whether the athlete is involved in a doping scheme. Athletes are frequently measured with different methods and for different purposes. From this perspective, a request to provide a urine sample does not necessarily stand out as an exceptional occurrence.

209. The Athlete has also underlined that the Moscow Washout Schedule identified athletes who were allegedly using the Duchess Cocktail containing oxandrolone, methenolone, and trenbolone. None of these substances were detected in the Athlete's sample.
210. The Sole Arbitrator does not accept this argument either. Both the London and Moscow Washout Schedules show that the washout testing was not limited to athletes who were only using the Duchess Cocktail. A number of different prohibited substances were used by Russian athletes, apparently depending on the circumstances in each individual case. The fact that the Athlete's samples recorded on the Moscow Washout Schedules did not reveal the presence of any of the components of the Duchess Cocktail does not signify that he had not used other prohibited substances.

h. Conclusion on an ADRV in Summer 2013

211. In conclusion, there are some facts and arguments that speak against the finding of an ADRV by the Athlete, including his denial. On the other hand, the above account shows that there are other weighty factors that strongly support a finding of an ADRV. Having carefully considered all of the evidence, facts, and arguments, the Sole Arbitrator is comfortably satisfied that the Athlete has used DMT in summer 2013 and thus violated Rule 32.2(b) of the 2012-2013 IAAF Rules.

C. If an ADRV Has Been Committed, What Is the Sanction?

a. The Duration of the Ineligibility Period

212. The Sole Arbitrator has concluded that the Athlete has violated Rule 32.2(b) of the 2012-2013 IAAF Rules.
213. Rule 40.2 of the 2012-2013 IAAF Rules reads, in so far as relevant, 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 Substance or Prohibited Method) (...), 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”.

214. Rule 40.6 of the 2012-2013 IAAF Rules on aggravating circumstances reads, in the relevant parts, as follows:

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

(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”.

215. In addition, Rule 40.7(d)(i) of the 2012-2013 IAAF Rules expressly sets out that *“the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)”*.
216. The IAAF maintains that a number of aggravating factors are relevant in the present case: the Athlete had used anabolic steroids, in particular DMT, on multiple occasions in the lead-up to the London Olympic Games and the Moscow World Championships, thereby committing multiple ADRVs. In addition, the Athlete had been part of a centralised doping scheme. In the IAAF’s opinion, this justifies the imposition of an aggravated period of ineligibility of four years.
217. The Athlete disputes the IAAF’s view and notes that the IAAF has failed to adduce sufficient evidence with respect to the alleged use of DMT on multiple occasions. With respect to the doping scheme, the only evidence adduced by the IAAF was the London and Moscow Washout Schedules, together with the Clean Urine Bank Schedule. The IAAF relies on the IP Reports, which do not contain any specific evidence of the Athlete’s purported involvement in the alleged doping scheme. The timing of the unofficial testing is not an aggravating factor in itself. In any event, a period of four years would be unreasonable and grossly disproportionate.
218. The Sole Arbitrator agrees with the IAAF that many of the aggravating circumstances listed in Rule 40.6(a) of the 2012-2013 IAAF Rules are relevant in the Athlete’s case.
219. First, the Sole Arbitrator accepts that the Athlete committed the ADRVs of July 2012 as well as of June and July 2013 as part of a doping plan or scheme both individually and involving a conspiracy or common enterprise to commit ADRVs. As noted elsewhere in this award, the Athlete had used prohibited substances in connection with the London Olympic Games and the Moscow World Championships. The concentrations of the prohibited substances found

in the Athlete's samples in July 2012 as well as June and July 2013 demonstrate a carefully planned doping program. By way of examples, according to the London and Moscow Washout Schedules, DMT had washed out from the Athlete's system before the London Olympic Games and Moscow World Championships.

220. In addition, the IP Reports conclude that an "*institutional conspiracy*" existed within Russia in relation to the London Olympic Games and the Moscow World Championships as well (see pages 76 and 84-85 of the First IP Report and page 1 of the Second IP Report). The IP has summarised that "*the Russian Olympic team corrupted the London Games 2012 on an unprecedented scale*" and that the "*corruption involved the ongoing use of prohibited substances, manipulation of samples and false reporting into ADAMS*" (pages 77-78 of the Second IP Report). The Athlete's four doping test sample codes appear in three London Washout Schedules. In addition, the Athlete's name appears five times in different Moscow Washout Schedules and in one Clean Urine Bank Schedule. Indeed, the fact that the Moscow Laboratory, which compiled the spreadsheets, is aware of the Athlete's name relating to the samples is another factor indicating a corrupted anti-doping regime.
221. Second, the Sole Arbitrator reiterates that the Athlete has committed two ADRVs one year apart. In conclusion, instead of an isolated single administration, the Athlete had used prohibited substances on multiple occasions.
222. Third, the IAAF has put forth in its Request for Arbitration that "*[t]he Athlete used anabolic steroids (in particular desoxymethyltestosterone)*". The Sole Arbitrator accepts that the Athlete has administered multiple prohibited substances. In addition to DMT that is well known to enhance sporting performance, the Moscow Washout Schedules indicate that the Athlete has used "*prohormones*". Indeed, according to EDP0028, the Moscow Laboratory had detected "*prohormones*" in the Athlete's sample of 28 June 2013. Consistently with this finding, EDP0030 and EDP0031 contain a remark "*stop prohormones!!!!*" with respect to the same sample. Considering that prohormones such as 1-androstenedione and 1-androstenediol (1-testosterone precursors) as well as 19-norandrostenedione (nandrolone precursor) were prohibited substances in 2013 (and still are) and that the Moscow Laboratory has not only highlighted their presence in the Athlete's (and other athletes') sample but also indicated that the Athlete should stop using them, the Sole Arbitrator is comfortably satisfied that the Athlete has also used prohibited substances in the form of prohormones.
223. Fourth, the intent to illegally enhance sporting performance in the most important and prestigious international competitions may be taken into account as an aggravating factor. As the language of Rule 40.6(a) of the 2012-2013 IAAF Rules shows, it is only a list of examples of aggravating circumstances and "*other aggravating factors may also justify the imposition of a longer period of Ineligibility*". The aim to gain unjustifiable advantage over rivals in the Olympic Games and IAAF World Championships can be considered particularly reprehensible because these events enjoy ultimate respect in athletics.
224. With respect to proportionality, the Sole Arbitrator notes that the WADC, on which the IAAF Rules are based, has been repeatedly found to be proportional in its approach to sanctions. A

case would have to be truly exceptional to justify the application of proportionality. This case is not one of them but a case involving repeated use of prohibited substances in connection with a severe doping scheme.

225. On the basis of all of the above, the Sole Arbitrator finds that the IAAF has been able to convince him to his comfortable satisfaction that the Athlete did commit the ADRVs in July 2012 and in June and July 2013 as part of a doping plan or scheme and that he has used prohibited substances on multiple occasions. Furthermore, the Athlete has been unable to persuade the Sole Arbitrator to his comfortable satisfaction that he did not knowingly commit the ADRVs.
226. Considering the seriousness of the Athlete's ADRVs and the fact that many aggravating factors listed in Rule 40.6(a) of the 2012-2013 IAAF Rules are relevant in the present case, the Sole Arbitrator finds that a period of ineligibility of four (4) years is appropriate in relation to the degree and severity of the Athlete's misbehaviour.

b. Commencement of the Ineligibility Period

227. With respect to the date of commencement of the sanction, the IAAF has requested that the ineligibility period commence on the date of the CAS award.
228. The Sole Arbitrator is guided by Rule 40.10 of the 2012-2013 IAAF Rules, titled "*Commencement of Period of Ineligibility*", which stipulates as follows:

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

229. The IAAF has not imposed a provisional suspension upon the Athlete. The Sole Arbitrator finds that the period of ineligibility shall start on the date of this award.

c. Disqualification of Results

230. The IAAF has requested that all competitive results obtained by the Athlete from and including 16 July 2012 through to the commencement of any period of provisional suspension or ineligibility are disqualified. The IAAF has submitted that in view of the severity and multiplicity of the ADRVs, there is no reason not to disqualify any results based on the fairness exception.
231. The Sole Arbitrator observes that the Athlete has disputed the IAAF's position. He has noted that the purpose of the disqualification is not to punish an athlete but to correct the results achieved by unacceptable means. The Athlete further points out that the IAAF does not even allege that the Athlete used prohibited substances after 2013. Therefore, even if the Sole Arbitrator accepted that an ADRV has occurred, there are no grounds to disqualify all results.

According to the Athlete's ADAMS entries, he has never provided a positive doping sample. Finally, the IAAF did not provisionally suspend the Athlete.

232. Rule 40.8 of the 2012-2013 IAAF Rules does not explicitly contain a fairness exception. However, CAS panels have previously deemed that Rule 40.8 of the 2012-2013 IAAF Rules, or its equivalents, include a fairness exception (e.g. CAS 2016/O/4464 and CAS 2017/O/4980) or at least that it cannot be excluded that a general principle of "fairness" may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect (e.g. CAS 2015/A/4005 and CAS 2017/O/5332).
233. The Sole Arbitrator finds that the general principle of fairness must prevail. Thus, the next issue to be determined by the Sole Arbitrator is the length of the disqualification period.
234. Pursuant to the IAAF Rules, the disqualification of results is the main rule and applying fairness would be an exception. Thus, in principle, all results of the Athlete from a period exceeding six years should be disqualified. However, results may remain valid if fairness so requires in the circumstances of each case. The factors to be assessed in the fairness test include, but are not restricted to, the athlete's intent and degree of fault, as well as the length of the disqualification period.
235. The fairness exception is an embodiment of the principle of proportionality, which according to established CAS case law, must be applied in doping cases. The sanction to be imposed for an ADRV must be proportional considering the length of the ineligibility period and the disqualification of results, together and alone. Indeed, although the main purpose of the disqualification of results is not to punish the transgressor but rather to correct any unfair advantage and to remove any tainted performances from the record (cf. CAS 2016/A/4464 para. 194, CAS 2016/O/4469 para. 176, and CAS 2017/O/5039 para. 132), having regard to the fact that the disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction (CAS 2016/A/4469 para. 176).
236. There is a mountain of CAS case law on the disqualification of results and the fairness exception. With regard to pure retesting cases concerning a single positive sample – which this case is not about – the Sole Arbitrator notes that it is the IAAF's policy to connect the disqualification period to the length of the ban (CAS 2016/O/4463 para. 138, CAS 2017/O/5330 para. 70, and CAS 2017/O/5332 para. 93). The logic there is that the athlete would not have been able to compete for such period had the ADRV been detected immediately. In cases where an athlete has engaged in doping practices for an extended period of time, the CAS panels have not hesitated in disqualifying all the results of an athlete who has been shown to have administered prohibited substances or used prohibited methods for a number of years (e.g. CAS 2014/A/3561 & 3614 and CAS 2016/O/4464). Conversely, the CAS panels have frequently applied the fairness exception and let results remain partly in force when the potential disqualification period extends over many years and there is no evidence that the athlete has committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period (see e.g. CAS

2016/O/4481, CAS 2017/O/4980, CAS 2017/O/5039, and CAS 2017/A/5045). The CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case.

237. The Sole Arbitrator repeats that the IAAF has requested the disqualification of results from a period extending to no less than six and a half years, which is considerably longer than the maximum period of ineligibility of four years that may be imposed under the IAAF Rules.
238. While the disqualification of results for a period exceeding six years would, as such, comply with the language of the IAAF Rules, the circumstances of the case as well as the principle of fairness do not support this. The Sole Arbitrator does not consider it fair to disqualify any and all results of the Athlete between 16 July 2012 and the commencement of the ineligibility period on the following grounds.
239. The Athlete has committed ADRVs in at least 2012 and 2013, when he administered very potent prohibited substances, i.e. exogenous anabolic steroids. The existence of the Athlete's name in the Clean Urine Bank Schedule originating from April 2015 suggests that the Athlete might have also used the same or other prohibited substances on other occasions, but there is no direct evidence of such administration. The Athlete has been tested numerous times after 2013, but the IAAF has not presented that the samples have produced positive results. Having said that, the Sole Arbitrator is also fully aware that negative samples do not always signify that an athlete has not administered prohibited substances – as this particular case shows. In this context, it is worth noting that the applicable rules do not stipulate that only the results that are shown to be achieved with the assistance of prohibited substances or methods shall be disqualified.
240. The Sole Arbitrator further notes that the IAAF does not even allege that the Athlete has committed an ADRV in the period from 2014 to 2018. However, the IAAF puts forth that the existence of the Athlete's name in the Clean Urine Bank Schedule from April 2015 indicates that the Athlete was protected and part of the Russian doping scheme in 2015 as well.
241. The Sole Arbitrator goes on to note that even though the Athlete has administered substances that could not be easily traced in 2012 and 2013, and he has not contributed to the uncovering of his ADRVs, he has not been able to influence the timing of the investigative measures either.
242. The Sole Arbitrator has previously concluded that the Athlete has committed two ADRVs by using anabolic steroids, primarily DMT. The nature of the substances found in the Athlete's washout samples is consistent with intentional use of a prohibited substance specifically administered to deliberately improve performance. Considering the main effects of exogenous anabolic steroids – increase of strength and muscle mass growth – it is obvious that the Athlete has gained advantage even after July 2012 and July 2013, when he had administered DMT. Therefore, the Sole Arbitrator finds that it would not be fair on the other athletes who have competed against the Athlete if his results immediately after July 2012 and July 2013 remained

untouched. On the other hand, the Sole Arbitrator observes that the Parties have not addressed in detail the length of the period during which the prohibited substances administered in 2012 and 2013 have enhanced the Athlete's sporting performance.

243. In the circumstances of the case, it is not appropriate to maintain all results between the two ADRVs and the commencement of the ineligibility period on the basis of fairness; the Athlete had repeatedly endeavoured to enhance his sporting performance with prohibited substances, thereby gaining unjustified advantage over his rivals. The Sole Arbitrator finds it appropriate to disqualify the Athlete's results until 31 December 2015. The disqualification period from 16 July 2012 to 31 December 2015 covers the years during which the Athlete committed ADRVs or was a protected athlete involved in a doping scheme. Extending the period until the end of 2015 reflects the fact that the Athlete committed a second ADRV in summer 2013. Together, the disqualification and the ineligibility periods total approximately seven and a half years, which is a severe but proportionate sanction for a severe offence.

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 6 April 2018 is partially upheld.
2. A period of ineligibility of four (4) years is imposed on Mr Ivan Ukhov, starting from the date of this award.
3. All competitive results of Mr Ivan Ukhov from 16 July 2012 through to 31 December 2015 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.