



Arbitration CAS 2021/A/7779 Russian Anti-Doping Agency (RUSADA) v. Ksenia Maximova, award of 13 June 2022

Panel: Mr Jordi López Batet (Spain), Sole Arbitrator

Weightlifting

Doping (oxandrolone metabolites)

“Further” analysis of samples under Article 6.5 ADR

Period of ineligibility under Article 10.2 ADR

1. While Article 6.5 of the All-Russian Anti-Doping Rules (ADR) foresees that any sample may be stored and subjected to “further” analysis for the purpose of Article 6.2 ADR at any time only at the direction of either WADA, RUSADA or the Anti-Doping Organization that initiated testing, and only before the results of the laboratory analysis on both the samples A and B were reported to the athlete as the ground of an accusation of a potential anti-doping rules violation according to Article 2.1 ADR, no infringement of Article 6.5 ADR is taking place if a laboratory, on its own initiative, is carrying out analyses on samples previously analysed provided those analyses are a repetition of confirmation procedures on new aliquots of the athlete’s samples in accordance with the International Standard for Laboratories rather than “further analyses” in the sense of Article 6.5 ADR. Furthermore, in case the athlete concerned is – prior to the communication of the analytical results to the athlete as the basis for an Article 2.1 ADR anti-doping rule violation – constantly informed of the process but does not, neither in the samples’ analysis and results management procedures nor in the disciplinary proceedings conducted before the first instance adjudicatory body, refer to or denounce a potential violation of Article 6.5 ADR, but rather reveals by his/her acts that s/he is in conformity with the procedures followed and willing to collaborate in the clarification of the facts and in the investigation conducted, no violation of Article 6.5 ADR may be found on this basis either.
2. According to Article 10.2 ADR, the standard period of ineligibility is four (4) years if the anti-doping rule violation does not involve a Specified Substance and the athlete cannot establish that the anti-doping rule violation was not intentional. In order to establish the origin of the Prohibited Substance, real evidence and not mere speculations are required and mere statement by an athlete regarding the origin of the Prohibited Substance without evidence sustaining this statement is insufficient for the purposes of proving how the substance entered the athlete’s body. Furthermore, for an anti-doping rule violation to be committed non-intentionally, the athlete must prove that, by a balance of probability, s/he did not know that his/her conduct constituted an anti-doping rule violation or that there was no significant risk of an anti-doping rule violation. In the absence of proof of the source of the prohibited substance and for the non-intentionality of the rule violation, in principle the standard period of ineligibility applies.

I. PARTIES

1. Russian Anti-Doping Agency (“RUSADA” or the “Appellant”) is the national anti-doping organization of Russia, with seat in Moscow.
2. Ms. Ksenia Maximova (the “Athlete” or the “Respondent”) is a Russian weightlifter with domicile in Ufa, Russia.

II. BACKGROUND FACTS AND THE PROCEEDINGS BEFORE THE RUSADA DISCIPLINARY ANTI-DOPING COMMITTEE

3. The elements set out below are a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the exhibits produced as well as the evidence examined in the course of the proceedings. Additional facts and allegations may be set out, where relevant, in connection with the ensuing legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, in its Award reference is made only to the submissions and evidence the Sole Arbitrator considers necessary to explain its reasoning.
4. On 21 June 2018, the Athlete underwent an in-competition anti-doping control in the Russian Weightlifting Cup among male and female juniors in the city of Salavat (the “Competition”).
5. The laboratory that analyzed the Athlete’s urine A Sample (WADA accredited Laboratory of Stockholm - the “Laboratory”-) reported an Adverse Analytical Finding (“AAF”) for presence of metabolites of Oxandrolone, which is a Prohibited Substance included in the 2018 WADA Prohibited List (the “Prohibited List”). In particular, Oxandrolone is comprised in Section S1 Anabolic Agents of the Prohibited List.
6. On 17 July 2018, RUSADA notified the AAF to the Athlete, informed her, *inter alia*, of the right to have her B Sample analyzed, communicated her that she became provisionally suspended because of the AAF and that her case would be submitted in due time to the RUSADA Disciplinary Anti-Doping Committee (the “Committee”).
7. On 20 July 2018, the Athlete requested RUSADA to provide with the concentration of Oxandrolone found in her system.
8. On 23 July 2018, the Laboratory informed RUSADA that Oxandrolone is a non-threshold Prohibited Substance and thus, that there is no requirement to quantify the concentration of this substance in the Athlete’s sample. Therefore, the Laboratory applied a detection method for qualitative and not quantitative purposes. In any event, an indicative estimation of the concentration was provided to RUSADA by the Laboratory for information purposes only.
9. On 24 July 2018, the Athlete requested RUSADA (i) to postpone the investigation on her as she wanted to analyze some dietary supplements she had been taking and (ii) to have the opportunity to open the B Sample.

10. On 31 July 2018, RUSADA informed the Athlete that the opening of the B Sample would take place on 7 August 2018.
11. On 10 August 2018, RUSADA sent a letter to the Athlete which in the pertinent part reads as follows:

“On the results of B sample opening

Please, be informed that on 7th of August 2018 the Stockholm Anti-Doping laboratory conducted opening of Sample B4268811 in the presence of the independent witness.

Sample B4268811 didn't confirm the result of sample A4268811 analysis, but the reanalysis of sample A4268811 confirmed the presence of the prohibited substance in A4268811. The Laboratory also stated that the sample is contaminated with solid particles. The Laboratory concludes that the probable cause for this fact could either be a result of tampering the sample or a result of a greater bacterial contamination. As the Laboratory observed the difference in the (sic) of the samples appearance (photo is enclosed) and pH also showed a difference the investigation of possible sample tampering was initiated.

To confirm the fact of tampering the Laboratory, in accordance with WADA recommendations, will reopen samples A and B 4268811 to compare them in the following:

1-pH

2-SG

3-markers of microbial degradation

4-Steroid profile

5-Confounding factors of steroid profile

6-Other urine markers, if possible (concentration of salt and protein, creatinine)

7-DNA test (optional, pending)

You have the right to be present or to appoint an independent witness”.

12. On 15 August 2018, the Athlete sent an email to RUSADA in the following terms:

“From the letter received from you I found out that the investigation into possible sample tampering has been initiated by you and I would like to provide you the information which could be useful during investigation.

21.06.2018

I took part in the Russian Junior Championship under 24 which was held in the city of Salavat. I won the completion (sic) and after that I together with Aleksandra Kozlova was invited by DCOs to provide a sample as I had finished 1st and she was 2nd.

I signed in, came in into the DC station and filled in a form and checked it. As I had tried to lose some weight before the competition I did not want to use WC as I was dehydrated. I drank 2 bottles of water and tried to provide a sample for the first time and it was an intermediate sample. I sealed my intermediate sample and asked to watch the completion as another girls participated. I signed the list establishing that I was leaving and together with my DCO went to the gym hall. We watched the first exercise (jerk uprise) and after that I needed to go to the bathroom so we went to continue the procedure. Later, I provide the needed amount of 90ml (it was even more -100ml). I packed everything, poured, sealed, checked all the numbers, verified everything on the vessels, got the copy and left. Being already in the hotel I received a phone call from DCOs, I talked to the girl who said that she had forgotten to write something down or had done it wrong so I should come back and rewrite it all. I hurried so much as a taxi was waiting for me to take me from Salavat to Ufa. I passed the phone to my coach who was so unhappy, argued with them and said that we had 30 minutes and as it was their mistake they should come to the hotel. He provided the name of the hotel and the room number. 10 minutes later the DCO arrived, the girl and a man. They filled in a new form and I checked it again, the samples numbers I checked from my copy which had been given to me as they did not have my samples together with them. The coach came in and said to write a comment. I felt sorry for DCOs as I did not want them to have problems at work and wrote down "no comments".

Moreover, I have the copies of all the DCFs which I could provide to you as there are scratched over forms. All these sheets are left from the doping-control procedure.

And somehow I was also given the form which did not belong to me".

13. On 23 August 2018, the Athlete requested RUSADA that her provisional suspension was withdrawn as the B Sample analysis had tested negative.
14. On 28 August 2018, the Laboratory's Director informed of the following:

"Scientific background for reanalysis of B-sample 4268811

The sample 4268811B was negative when first analyzed for the metabolites of oxandrolone. The sample 4268811A was reanalyzed and the adverse analytical finding (AAF) for this sample remained.

It was observed that the appearance was different for the A and the B sample and a preliminary check of pH showed a difference.

The cause for the negative result can either be a result of a greater bacterial contamination in the B sample (pH increase) compared to the A sample or a result of tampering. Also, the deviating result could be due to poor mixing of the sample prior to separation between the A and the B bottle.

The method is based on deglucuronidation by enzyme hydrolysis prior to GC-MS/MS detection of the free steroids. The enzymatic hydrolysis by B-glucuronidase is dependent on the sample pH. Therefore, we buffer the sample to be at the optimal pH for the enzyme to work properly. If the pH is too high in the sample and the added buffer is not capable of lowering the pH, the enzyme will not work and hence no metabolites of oxandrolone will be detected. With a high pH it is required to adjust this prior to analysis and make sure that the enzyme can work properly. This adjustment was not done during the first B sample analysis since it

was not expected to have different pH for the A and the B sample. The analysis should therefore be repeated with proper adjustment with the knowledge that there is a difference between the A and the B sample.

The following tests will need to be performed to evaluate if the sample is truly negative or if the sample has been tampered in any way:

- 1. Re-analysis of oxandrolone metabolites with care taken to pH.*
- 2. Steroid profile*
- 3. Confounding factors and bacterial markers*
- 4. pH and specific gravity*
- 5. Salts: sodium, potassium, calcium and chloride*
- 6. Creatinine*
- 7. Bacterial activity (optional)*
- 8. DNA test (optional)*

The tests will need to be performed for both the A and the B sample side by side for proper comparison”.

15. On 29 August 2018, RUSADA sent a letter to the Athlete in the following terms:

“Please, be informed that the Stockholm Anti-Doping Laboratory informed us that during the investigation described in the notification from 10th of August 2018, B sample 4268811 will be reanalyzed for metabolites of the prohibited substance oxandrolone adjusted for pH level. In case the reanalysis of B sample doesn’t confirm the presence of the prohibited substance in it, the possibility of elimination of provisional suspension will be considered.

According to art. 7.3.3 of All-Russian Anti-Doping Rules you have the right to be present at the opening and analysis of B sample. Please, let us know if you are willing to participate in the procedure. In case you are not able to be present at the opening and analysis of B sample, the Laboratory will provide the presence of the independent witness.

Attachment: The scientific background for reanalysis of B sample 4268811 in English and in Russian”.

16. On 31 August 2018, the Athlete requested RUSADA to reschedule the date of the B Sample analysis in the presence of her representative and to be notified of the date, time and place in which such procedure would take place.
17. On 13 September 2018, RUSADA informed the Athlete that the reopening of the B Sample would be conducted on 20 September 2018 in the Laboratory, and explained her the procedure of opening and analysis of such sample as follows:

“Hello Kseniya,

Please find attached the notification letter on the date of B Sample opening and analysis. Your representative shall bring an identity document the copy of which should also be referred to RAA “RUSADA”.

The procedure of the B Sample opening and analysis will take place as follows:

12:00 – 13:30 – B Sample opening.

- Greeting and verification of the legitimacy*
- A and B Sample are taken out of the freezer and left to thaw*
- While waiting for the thaw process to be completed, provision of the short summary explanations of the result in general terms as no documentation package has been requested. It will be also explained what will happen to the Sample.*
- B Sample integrity checking and sample opening. A and B Samples aliquoting.*
- B Sample closing and checklist signing. After that, the representative may leave unless he is an expert who would like to attend the entire procedure.*

13:30 – the beginning of the analysis: preparation and analysis of the samples. The analysis for the presence of the oxandrolone metabolites will be carried out during the night. The results are expected the next day. All additional analysis to estimate the difference and any intervention will begin simultaneously but there is no precise ending time as the DNA-analysis could be needed and will request and additional time and the sample reference”.

18. On 26 September 2018, the Laboratory, after the relevant analysis, concluded that the B Sample had to be reported as an AAF for presence of Oxandrolone metabolites, in accordance with the following explanations:

“Scientific background for reanalysis of B-sample 4268811

Introduction and Background

The sample 4268811A was reported as an adverse analytical finding (AAF) for oxandrolone metabolites. Opening and reanalysis was requested for the sample 4268811B. The athlete or a representative was not present during the opening and the analysis. An independent witness from the Swedish NADO was present to witness the opening/ closing procedure for the B-sample. The result of the B-sample analysis was unexpected with a negative result for the metabolites of oxandrolone. The sample 4268811A was reanalyzed and the AAF for this sample remained.

It was observed that the appearance was different for the A and the B sample (fig 1) and a preliminary check of pH showed a difference. This was unexpected as the A and the B sample shall have the same content. [...].

It was concluded that the probable cause for the negative result could either be a result of a greater bacterial contamination in the B sample (pH increase) compared to the A sample or the result of tampering. The pH increase is typical in samples with bacterial contamination, usually resulting from long transportation without refrigeration or freezing. The difference in sample appearance could be due to none or poor mixing of the sample prior to separation between A and the B bottle.

The method for analyzing oxandrolone metabolites is based on deglucuronidation by enzyme hydrolysis prior to GC-MS/MS detection of the free steroids. The activity of B-glucuronidase is dependent on sample pH. Therefore, we buffer samples to the optimal pH. If pH is too high the added buffer will not be capable of lowering it, the enzyme will not work and hence no metabolites of oxandrolone will be detected. With a high pH it is required to adjust this prior to analysis and make sure that the enzyme can work properly. This adjustment was not done during the first B-sample analysis since pH was not expected to differ from the A-sample. The A and the B sample should be the identical.

Following this reasoning with a possible case of tampering, unexpected appearance and pH difference it was decided that a second opening of the B sample was required.

The athlete was notified of the decision and decided to send a representative to witness the opening procedure and primary analysis, the analysis of oxandrolone metabolites.

It was also decided to perform the analysis for the A and the B sample side by side to see (sic) possible tampering or unexpected differences.

The following tests were performed (two pending):

- 1. Re-analysis of oxandrolone metabolites with care taken to pH.*
- 2. Steroid profile*
- 3. Confounding factors and bacterial markers as per TD2018EAAS*
- 4. pH and specific gravity*
- 5. Salts: sodium, potassium, calcium and chloride*
- 6. Creatinine*
- 7. Bacterial activity (optional, pending)*
- 8. DNA test (optional, pending)*

Results

The reopening procedure went as intended with no interference from the representative.

Again, the appearance difference was noted and also an unpleasant strong smell from the B sample, not the A sample. The results are summarized in table 1. below.

[...]

pH and specific gravity was analyzed first under supervision of the representative. The difference in pH was substantial (see table 1) and a pH adjustment for the deglucuronidation by enzyme hydrolysis to work was required. This adjustment was done for the analysis of the oxandrolone metabolite, the steroid profile and the confounding factors as these tests are all dependent upon deglucuronidation by enzyme hydrolysis. It was also a minor difference in specific gravity and creatinine. The representative could only oversee one procedure as they all were performed in parallel, so it was decided that the oxandrolone metabolites was the most important to for the representative to follow.

After proper pH adjustment, these three tests showed no significant differences. Meaning that the oxandrolone metabolites was detected also in the B sample. The steroid profile in the A and B samples agreed with no obvious bacterial markers detected as described in TD2018EAAS. Neither was there any differences in the confounding factors. In addition, could we show agreement between the steroid profile first reported for the A-sample, with the confirmed values.

The different salt ions investigated showed similar and normal results. However, chloride content was judged to be different in the A and the B samples.

Discussion

The pH difference was substantial and caused the negative result for the B sample. The reason for the high pH is not easy to understand.

A theory is that the sample was not mixed prior to distribution between the A and the B bottle and a possible bacterial contamination, not detected as per TD2018EAAS, was present in the solid phase of the sample. The solid bottom part of the sample would then end up in the B sample and not in the A sample. This could explain the appearance difference and the high pH in the B sample. This could also explain the differences in specific gravity and creatinine and possibly also the chloride content since more solid particles, and likely more salts would be present in the B sample.

Another theory is still that the sample was tampered. pH could be increased in only the B sample, possibly with ammonia solution, this will be difficult to prove.

The opinion of the laboratory is that no further analysis is needed. There is no reason to believe that the A- and B-sample originated from different individuals or collection times, since steroid profile, oxandrolone metabolites and confounding factors are all in agreement. Meaning that the DNA analysis should not be conducted. The bacterial activity (not covered in TD2018EAAS) could be interesting but most likely there is no activity left in the B sample due to the elevated pH and the fact that the sample has been frozen. The laboratory does not recommend continuing this investigation.

Conclusion

The sample shall be reported as an AAF for oxandrolone metabolites, all other findings shall also be reported in ADAMS and no further studies are necessary”.

19. On 3 October 2018, RUSADA informed the Athlete that the analysis of the B Sample

confirmed the result of the analysis of the A Sample, that is to say, presence of Oxandrolone metabolites.

20. On 11 October 2018, the Athlete requested RUSADA to test two athletes, Mr. Albert Sayakhov and Mr. Rishat Miniyarov. This request, in the pertinent part, reads as follows:

“I kindly ask you to test the athletes Mr. Albert Sayakhov and Mr. Rishat Miniyarov for the presence in their samples of the prohibited substance which have been detected in my sample collected at the Russian Junior Championship in the city of Salavat. I suspect that one of these athletes could have been using the prohibited substance which entered my system when contacting with them. [...]”.

21. On 6 February 2020, the Athlete provided to RUSADA the following explanations as to the presence of Oxandrolone metabolites in her body at the time of the anti-doping control:

“I, Maksimova Kseniya Sergeevna, participated in the Russian Junior Weightlifting Championship among Young People which took place in summer 2018 in the city of Salavat where I was tested positive. When I’m building a timeline for the last month before completion I can say that I spent three weeks in the training camp as a part of the Russian youth team at the sport base in Ruzza. I followed all of the rules there (e.g. drink from the closed bottle, take vitamins only from the closed boxes), therefore, it is unlikely that the prohibited substance entered my body at the sport base. After the end of the training session I went home for 3 days to Ufa as the competition was held in the city of Salavat which is near Ufa my coach and I agreed that I could spend few days at home and the missed workouts would be completed by me in the city of Ufa at the sport studio of my friend Albert Sayakhov. Albert is the master of sport of international class in weightlifting who had his weightlifting studio at the time which could be used by me for trainings once I was in Ufa. I had close personal relationships with Albert at this time like girlfriend and boyfriend. The first night after arriving to Ufa I spend with Albert where I have not taken any pills or powders. The next day coming to practice I entered coaching room and saw Albert hugging the lady instructor of the studio, that is why I asked his friend Rishat Miniyarov who had just finished his training to drive me home after training. He had driven me home; we stayed in the care where we did oral sex. The next evening I went to Salavat to participate in the championship and did not speak with anyone from Ufa anymore. After I was informed about possible anti-doping rules violation I have started to explore all possible options and remembered that Albert and Rishat wanted to participate in the republican competitions and they could use something and they have not been training for a long time. I asked Albert directly about it and he did not give me a clear answer. Therefore, I asked you to test these guys during the investigation. After a while Albert was visited by the DCOs and as he said he had provided his sample. And Rishat avoided DCOs and according to Albert Rishat had been informed by his family members and did not come back home until they have left. When I found out that Rishat hid from DCOs I asked to have an honest conversation where I threatened him to tell his fiancé about us. He explained that he did not give me anything and that he took expired pills and injected something into the muscle but that was his business as he was not going to take part in any competitions. To confirm the fact that he used the substances prohibited in sport and had sexual intercourse with me Rishat can only if this information is not going to be disclosed. To show his commitment to help me he provided me the information on the anti-doping rule violation by the athlete which has been submitted to you earlier. The other people and version of how the prohibited substances could enter my system I don’t have. All those years I took part in the Russian and international competitions I had never violated anti-doping rules and always played fair. I am really worry (sic) about everything happening and ready to do everything possible to help”.

22. On 19 March 2020, RUSADA requested the following expert opinion to the Laboratory:

“As part of the investigation of a possible ADRV by the Athlete, the Athlete provide us with the explanations where she stated that prohibited substance –oxandrolone presumably entered her body as a result of oral sex. The concentration of the prohibited substances (Sample 4268811): 18-nor-17a-hydroxymethyl-2a, 17d-dimthyl-5a-androst-13-ene-3-one is 6ng/ml; 17a-hydroxymethyl-17b-methyl-18-nor-2-oxa-5a-androst-13-ene-3-one is 3ng/ml. The Athlete also stated that she had two sex partners at that period of time.

One of the partners were tested and the sample was clean.

Unfortunately we couldn't test the second partner.

Unfortunately we don't have any additional information about taking medications by any of her partners.

Could we would (sic) kindly ask you to provide us with your expert opinion whether such a situation is possible.

Thank you in advance for your cooperation”.

23. On 27 March 2020, the Laboratory sent an email to RUSADA which in the pertinent part reads as follows:

“[...] We are now finishing the expert opinion in relation to the scenario below, and as a routine, we went through all the internal documentation concerning the sample 4268811. Unfortunately we now see that a clerical error was made in the reporting of the result in ADAMS, both for the A sample 2018-07-17 and the B sample 2018-10-01.

The clerical error does not concern the status of the sample, it is still an adverse analytical finding, AAF for both A and B sample, but concerns the chemical name of one of the metabolites. The wrong chemical name was used for one of the metabolites of oxandrolone. This clerical error is also present in the Concentration estimation reported to RUSADA 2018-07-23 (by email to Mrs. Tatyana Galeta).

Only in ADAMS and in the Concentration statement the erroneous chemical name

18-nor-17a-hydroxymethyl-2a, 17b-dimethyl-5a-androst-13-ene-3-one

was used for one of the metabolites. The correct name should be

17b-hydroxymethyl-17a-methyl-18-nor-2-oxa-5a-androsta-13-en-3-one.

This correct chemical name is present in all internal documentation in the laboratory in relation to the analysis of sample 4268811.

I am very sorry for this error and do apologize for the difficulties this may inflict on you. Although our routines have changed since 2018 and now are minimizing the risk for such clerical errors, the lab will starting a root cause analysis for this deviation.

My suggestion at this moment is to produce a corrected Concentration estimation, with the correct chemical name and present to you. No other parameter will change. The estimated concentrations still stands.

We also suggest to correct the chemical name of the metabolite in ADAMS for A and B sample. No other parameter in the ADAMS report will change. The AAF for both A sample and B sample still stands.

[...]”.

24. On 31 March 2020, the Laboratory reported that it was highly unlikely that the AAF could be explained by oral sex as suggested by the Athlete.
25. On 14 April 2020, RUSADA informed the Athlete about the clerical error referred to by the Laboratory in its email of 27 March 2020 and indicated that it did not concern the AAF. It also requested the Athlete if she would provide any additional explanations and if she would attend the hearing of her case.
26. On 16 April 2020, the Athlete sent an email to RUSADA which reads as follows:

“I do not mind hearings in absentia. I would like to clarify that my partner told me that he took the drug twice a day per 10 mg by placing the pill under the tongue until completely resorbed. We kissed before oral sex and it could affect my sample result. I have no other assumptions, but I am absolutely sure I have observed all the anti-doping rules”.

27. On 16 April 2020, in light of the Athlete’s email of the same date, RUSADA requested the Laboratory to provide its opinion as to whether the situation described in such email was possible. The Laboratory’s reply on it reads as follows:

“The scenario could be divided in two parts.

1. *Could matrix like saliva, tablets or minor parts of tablets be transferred from one person to another by kissing?*
2. *Could a 10mg tablet of oxandrolone, minor parts of such a tablet, or oxandrolone-contaminated saliva be a reason for detection of oxandrolone metabolites in urine?*

For part one: General reasoning would not find it unlikely that this could happen during kissing, but our opinion on this is by no means more valid than any other opinion.

For part two: If a 10 mg oxandrolone tablet, or minor parts of such a tablet is ingested by a person, it would not be unlikely that metabolites of oxandrolone could be detected in urine. The concentration levels would depend on the amount of ingested oxandrolone (the concentration in the contaminated saliva and/or the size of the tablet fragment) and the timepoint of urine collection.

We have not found any literature on for how long the oral cavity is contaminated with oxandrolone or other anabolic steroids after sublingual administration (tablet under tongue) but salivation will decrease concentration over time and lower saliva concentrations towards systemic concentrations. For transfer of

oxandrolone by kissing from person one to person two, we would expect that kissing should be done during, or closely after sublingual oxandrolone administration by person one”.

28. This information was sent to the Athlete on 21 April 2020, and she was told that her case would be transferred to the Committee.
29. On 29 May 2020, RUSADA informed the Athlete that the Committee had decided to conduct hearings in absentia in her case of potential violation of the All-Russian Anti-Doping Rules (the “ADR”).
30. On 3 June 2020, RUSADA informed the Athlete that *“on 2 June 2020 the hearings on the case on your potential violation of anti-doping rules of the art. 2.1. of All-Russian Anti-Doping Rules were held. The Disciplinary Anti-Doping Committee has decided to postpone the proceedings”.*
31. On 22 July 2020, RUSADA sent an email to WADA requesting the issuance of an expert opinion, in the following terms:

“[...] We’d like to get your expert opinion.

On August 9, 2018 the RUSADA received a letter from the Stockholm Laboratory regarding the analysis of Sample B 4268811 (you can find more information in the attached file):

The letter reads as follows:

“The result of the B sample of 4268811 was analyzed yesterday and we have very interesting findings. The first result for Oxandrolone metabolites in 4268811B was negative.

We thoroughly checked our procedures and we performed one more preparation of the B-sample, to rule out laboratory mistakes.

Same result again, negative. We then opened the 4268811A to redo the analysis of oxandrolone metabolites, the positive result was again confirmed.

So we have a situation with a positive A and a negative B sample”.

DADC asked to clarify with the laboratory “with whom the algorithm for re-analysis of A sample was agreed, is this consistent with article 6.5 of the WADA Code”.

The Laboratory replied that “in this case, article 6.5 of the WADA Code cannot be applied because it was a re-analysis, not a further analysis”.

The re-analysis of A-sample on the 8th August 2018 may be referred to the ISL paragraph 5.2.4.3.1.4 (2016 ISL version, found as paragraph 5.3.4.5.4.7.4 in the current 2019 ISL version).

The confirmation of the A-sample was repeated with a new aliquot to investigate why the result of the B-sample differed from the A-sample. Early the day after the analysis, RUSADA was informed as you mentioned, 9th of August. In parallel, WADA was also informed about the situation 9th of August”.

DADC also asked to clarify the legal basis for the re-analysis of the A sample in this case, if it does not follow from Article 6.5 of the Code. Could you please clarify what is the difference between a re-analysis and a further analysis?”

32. On 27 July 2020, WADA replied the following to such RUSADA’s email:

“[...] I’m double-checking one point with our Science Department and will get back to you in due course.

In the meantime, I bring to your attention the definition of “Further Analysis” which is available in the ISL if it may help the DADC”.

33. On 30 July 2020, WADA sent the following email to RUSADA concerning the latest request for expert opinion:

“[...] One may say that:

- 1. “Further Analysis” applies to any new analysis (being it new methods or new target analyses) applied to an already sample; and*
- 2. “Re-Analysis” may be understood as the repetition of an analysis already done (for example, when a lab reports a false AAF and the re-analysis of samples previously reported with the same finding is requested).*

However, as confirmed by WADA Science Department, this might all be semantics as neither the Code or the ISL establishes a formal difference between “Further Analysis” and “Re-Analysis”.

34. On 19 August 2020, the Head of RUSADA’s Scientific Department sent a letter to the Committee which in the pertinent part reads as follows:

“Dear members of the Disciplinary Anti-Doping Committee,

I was asked to give my opinion on the actions of the Stockholm laboratory when analyzing A and B Samples 4268811 collected in-competition by RAA “RUSADA” on 21st June 2018.

The A Sample analysis returned positive for the presence of oxandrolone metabolites thereby the case of possible anti-doping rule violation was opened against the athlete. The following B Sample 4268811 analysis was negative in relation to the presence of oxandrolone metabolites in the sample. Thereafter the laboratory carried out the second A Sample analysis which confirmed initial report on the presence in it of oxandrolone metabolites (RAA “RUSADA” and WADA have been notified of the conduction of this analysis and its results) and later re-analyzed B Sample confirming the results of A Sample analysis.

In the explanations for the laboratory actions following the first negative B Sample analysis Stockholm laboratory referred to clause 5.2.4.3.1.4 of the International Standard for laboratories (2016 edition which was into force in the 2018, hereafter ISL) which required the laboratories to have policies to define those circumstances where the confirmation procedure for an A Sample may be repeated citing the batch quality control failure as an example: “The laboratory shall have a policy to define those circumstances where the Confirmation Procedure for an “A” Sample may be repeated (e.g., batch quality control failure) and the first

test result shall be nullified. Each repeat confirmation shall be documented and be performed on a new Aliquot of the “A” Sample and new quality control samples” (hereinafter author’s translation, similar provision for B Sample can be found in clause 5.2.4.3.2.9 of the ISL) (1).

Obviously, the situation when B Sample analysis doesn’t confirm the results of the A Sample analysis is a serious problem in terms of quality of laboratory testing. Assuming the result of the A Sample analysis was false positive which could cause serious consequences down to the withdrawal of the accreditation (“The reporting of a false Adverse Analytical Finding on a routine Sample is a serious non-conformity (...) The Laboratory shall immediately notify WADA if any result from a Sample is falsely reported as an Adverse Analytical Finding to an Anti-Doping Organization. WADA may provisionally suspend the Laboratory pending resolution of the case” (clause 4.4.13.2.2 of the ISL (2)).

*This fact can also be the reason to require to review the results or re-analyse the other samples which earlier returned the Adverse Analytical Findings for the same or similar substances (“The Laboratory may be required to review past test results and may be required to re-analyse all relevant Samples as Adverse Analytical Findings by the Laboratory (...). Depending on the type of error that caused the false Adverse Analytical Finding, this retesting may be limited to one analyte, one or more substance(s) or a class of Prohibited Substances or Prohibited Methods”, see *ibid*).*

However, to determine whether the results have been false positives or not further re-analysis of the sample shall be conducted pursuant to the laboratory policies on quality control sample under the provision of clause 5.2.4.3.1.4 of the ISL.

Thus, despite the possible formal contradictions to the provisions of article 6.5 of the World Anti-Doping Code, the conduction of the second analysis in this situation is designed to protect athlete’s interests and clean sport as it is a way to identify the problems in analytical procedures which could produce the false results and grounds for adoption of the relevant correction measures.

In addition, it draws an attention to the fact that article 6.5 of the Code uses the term “Further Analysis” which is defined in the ISL as following: “Further Analysis: Any analysis for any substance or method except where an Athlete has previously been notified of an asserted anti-doping rule violation based on an Adverse Analytical Finding for that substance or method” (3) (emphasizes added).

Moreover, based on the need to establish the reasons in A and B Sample analysis results differences which could not be established without second analysis of those samples, provision on the quality control samples of the International Standard for Laboratories as well as the specificity of definition “Further Analysis” of the ISL, it could be concluded that the purpose of article 6.5 of the Code is the prohibition to conduct second analyses for the substances different from the substance on the presence of which the athlete has been notified during the results management process and the analysis on the same substance doesn’t fall under the definition “Further Analysis”.

In the present case the second A Sample analysis did not result and could not result in the identification of any new circumstances of the case (e.g., the detection in the sample of other prohibited substances) as its clear aim was to establish if the result of the previous A Sample analysis had been correct or false positive.

After the second analysis confirmed the initial report on the presence of oxandrolone metabolites in the A Sample, i.e. it has been established that the result of the previous analysis was not false positive and the laboratory conducted additional investigation to identify the reasons for the difference between A and B Sample analysis results.

The investigation revealed that B Sample was different in appearance from A Sample and had pH equaled 8.8 which was significantly different from A Sample pH (5.7), the remaining indicators for both samples were very similar.

Considering that in the process of sample preparation the enzymatic hydrolysis is used together with ferment of B-glucuronidase which activity heavily depend on pH solution (see “information on product” from Sigma-Aldrich, where the quality of the optimal range of pH for the enzymes received from recombinant E. coli stamps, the range specified at pH6-7 (4)), and which is either not active or significantly less active in case where pH of the environment is out of this range then the negative result of the initial B Sample analysis conducted without measurement and correction of pH is false negative because in the course of preparation for the analysis the conditions for the allocation of dedicated analytes were not created.

The second B Sample analysis held with an adjustment of pH led to the detection of oxandrolone metabolites in the sample which corresponds to the results of A Sample analysis.

RAA “RUSADA” in not aware of any WADA objections to the Stockholm laboratory actions, which would have been questioning the authority to conduct a second analysis. Moreover, as the Stockholm laboratory is a laboratory accredited by WADA, it implies that its policies and procedures including quality control procedures under clause 5.2.4.3.2.9 of the ISL were examined by WADA and declared compliant with the relevant Code and ISL requirements.

Thus, we believe that the presence of the prohibited substance in the athlete’s sample had been verified.

[...].

References (sic)

1. *International Standard for Laboratories, June 2016, p. 44, 47 (https://www.wada-ama.org/sites/default/files/resources/files/isl_june2016.pdf)*
 2. *International Standard for Laboratories, June 2016, p. 29, 30 (https://www.wada-ama.org/sites/default/files/resources/files/isl_june2016.pdf)*
 3. *International Standard for Laboratories, June 2016, p. 14 (https://www.wada-ama.org/sites/default/files/resources/files/isl_june2016.pdf)”*
 4. *Product Information: B-Glucuronidase from Escherichia coli, recombinant from overexpressing Escherichia coli BL_21 (<https://www.sigmaaldrich.com/content/dam/sigmaaldrich/docs/sigma/datasheet/7/g8295dat.pdf>)”.*
35. On 26 August 2020, the Committee resolved that the Athlete had not violated the ADR, in accordance with the following reasoning:

“Having reviewed the evidence present in the case files, the Committee believes that the Athlete cannot be acknowledged as having committed anti-doping rules violations.

According to article 2.1.1 of All-Russian Anti-Doping Rules adopted by order of the Ministry of Sport of the Russian Federation of August 9, 2016 no. 947 (hereinafter – All-Russian Anti-Doping Rules, Rules), it is the Athletes’ personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.

According to article 2.1.2 of All-Russian Anti-Doping Rules, sufficient proof of an anti-doping rule violation under Article 2.1 is any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete’s B Sample is analyzed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample.

On July 19, 2018, conclusion was received from Stockholm anti-doping laboratory that metabolites of oxandrolone were found in the Athlete’s Sample A, oxandrolone being in S1 category of WADA 2018 Prohibited List.

The Athlete exercised her right for analysis of Sample B. On August 10, 2018, RAA RUSADA sent the Athlete and the Federation, a notification about the results of opening and studying Sample B. According to the information provided by Stockholm anti-doping laboratory, Sample B did not confirm the result of analysis of Sample A.

According to article 5.2.4.3.2.3 of the 2016 International Standard for Laboratories, if the “B” Sample confirmation proves negative, the entire test shall be considered negative.

Thus, at the time when the result of the first analysis of Samples A and B was received, the standard of proof stipulated by article 2.1.2 of All-Russian Anti-Doping Rules in accordance with article 2.1, was not observed.

In the notification sent to the Athlete on August 10, 2018, RAA RUSADA informed with the reference to the information from the laboratory that the repeated analysis of Sample A confirmed again the presence of prohibited item. Also, the laboratory specified that Sample B is contaminated with many solid particles. The samples look differently, and the pH of the two specimens does not match. In the laboratory’s view, this fact can possibly be explained by possible substitution of the specimen or bacteriological contamination. In connection with that, the laboratory started investigation regarding potential tampering of the sample. The laboratory informed that based on WADA’s recommendations, it will open Sample A and B 4268811 again to compare the two specimens.

As the official note of the Head of RAA RUSADA Investigations Department addressed to RAA RUSADA Director General, agreed on August 16, 2018, states that the laboratory decided to conduct an additional analysis of Samples A and B in regard of the investigation of possible tampering of the samples (that is of other potential anti-doping rules violation). As a result of the conducted repeated analysis of these samples, the version about possible tampering was not unequivocally confirmed.

Nevertheless, the results of the additional analysis if (sic) the samples formed the basis of the accusation against the Athlete on this case.

In accordance with article 6.5 of All-Russian Anti-Doping Rules, any sample may be stored (for the period of up to 10 years) and subjected to further analysis for the purpose of Article 6.2 of the Rules at any time exclusively at the direction of the following organizations: a) WADA (at any time), b) RUSADA or the Anti-Doping Organization that initiated testing, before the results of the laboratory analysis on both the samples A and B were reported to the Athlete as the ground of the accusation of potential anti-doping rules violation according to article 2.1 of the Rules, additional analysis of the samples must be performed pursuant to the requirements of the International Standard for Laboratories and the International Standard for Testing and Investigations.

It implies that the laboratory could not by its own initiative carry out additional analysis of samples A and B (at least for the purposes of pressing charges in accordance with article 2.1 of All-Russian Anti-Doping rules). At the same time, despite numerous requests of the Committee to provide evidence of the fact that the additional analysis of the samples was carried out by instruction of WADA or RAA RUSADA or at least agreed with them, no such proof was submitted to the case file.

The Committee considers as unsubstantiated the laboratory's arguments that the conducted analysis of the sample was a repeated analysis, not an additional analysis. The International Standard for Laboratories mentions the term "repeated analysis" only several times, but none of the articles containing this term, is relevant to the matter. Moreover, as the reply of WADA specialist Cyril Trussard (sic) in email of July 30, 2020 indicates, with reference to WADA Science Department, the difference between additional analysis and repeated analysis can be only of semantic nature because neither WADA Code nor the International Standard for Laboratories differentiate between additional analysis and repeated analysis of samples.

The Committee considers the reference of the laboratory to article 5.2.4.3.1.4 of the International Standard for Laboratories as unsound. This article stipulates that the laboratory must have written description of the circumstances which require conducting a repeated Confirmation Procedure for Sample A (for example, in case if the result of analysis of control quality sample during the batch analysis is unacceptable), when the results of the first analysis are annulled. Each repeated confirmation must be documented and performed with use of new aliquot of Sample A and new quality control samples. And the laboratory carried out two additional studies of Sample A after the Athlete was informed about result of the first analysis, and none of the previous samples was annulled.

In any case, in the Committee's opinion, the specified provisions of the International Standard for laboratories cannot be applied without consideration of the provisions of article 6.5 of All-Russian Rules and WADA Code which are the guarantee of the observation of the Athlete's rights and which rule out carrying out an additional analysis at any time at the discretion of the laboratory.

The Committee cannot agree with the opinion of Head of RAA RUSADA Science Department, candidate of chemical science A.N. Kondakova stated in her conclusion of August 19, 2020. A.N. Kondakova states in this conclusion that "despite possible formal contradiction to the provisions of article 6.5 of the World Anti-Doping Code, conducting a repeated analysis in such a situation protects athletes' interests and clean sport, as it a way of identifying problems in analytical procedures which could produce false positive results, and the grounds for taking necessary corrective measures".

The Committee believes that the provisions of WADA Code and All-Russian Anti-Doping Rules cannot be violated in a specific case for the sake of protecting athlete's interests and clean sport in general. Observing the rules of testing and data processing stipulated by WADA Code, All-Russian Anti-Doping and the international standards is an important guarantee of observing athletes' rights.

The Committee states that the anti-doping organizations had all the opportunities to initiate and conduct further analysis of samples with observation of article 6.5 of All-Russian Anti-Doping Rules, but they did not do that.

The Committee also takes into consideration that during the data processing, other various violations were committed which, although each of them separately is not a reason of adverse analytical finding or actual basis of anti-doping rules violation (article 3.2.3 of All-Russian Anti-Doping Rules), they together make an impression of insufficient attention to the athlete's rights and the established rules regulating the data processing process.

With consideration of the above, the Committee does not accept as proof the results of additional analyses of samples A and B of the Athlete obtained with violation of article 6.5 of All-Russian Anti-Doping Rules. No other proof obtained with observation of the legal norms, confirming the fact of committing anti-doping rules violation by the Athlete, has been included in the case file.

Basing on the above, the Committee acknowledges the Athlete as not having violated All-Russian Anti-Doping Rules”.

36. On 12 February 2021, the aforementioned decision was formally received by RUSADA.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 3 March 2021, RUSADA filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Athlete with respect to the decision No. 5/2021 rendered by the Committee on 26 August 2020 and received by RUSADA on 12 February 2021 (the “Appealed Decision”). In its Statement of Appeal, RUSADA requested that (i) the matter be submitted to a Sole Arbitrator, (ii) English be the language of the arbitration and (iii) an extension to file the Appeal Brief be granted, and submitted the following prayers for relief:

“The Appellant respectfully requests the Panel to:

- a) set aside Decision No. 5/2021 dated 26 August 2020.*
- b) find that the Respondent has committed an Anti-Doping Rule Violation contrary to the ADR.*
- c) impose a period of ineligibility of four (4) years in respect of such Anti-Doping Rule Violation as required by the ADR.*
- d) order the Respondent to reimburse the Appellant its legal costs and other expenses.*
- e) order the Respondent to bear the costs of the arbitration”.*

38. On 15 March 2021, the CAS Court Office invited the Athlete to comment, *inter alia*, on the request for term extension made by the Appellant in its Statement of Appeal, the choice of English as language of the arbitration and on the submission of the case to a Sole Arbitrator.
39. On 25 March 2021, the CAS Court Office noted that the Athlete did not provide her position on the issues raised in the correspondence of 15 March 2021, granted the term extension requested by RUSADA and informed the Parties that it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators dealing with this case. In addition, it also noted that the Athlete did not object to English as the language of the arbitration.
40. On 1 April 2021, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit this case to a Sole Arbitrator.
41. On 12 April 2021, the Appellant requested a new extension to file the Appeal Brief until 30 April 2021.
42. On 12 April 2021, the CAS Court Office granted a 10-day extension of the deadline to file the Appeal Brief as per Article R32 of the CAS Code and invited the Athlete to comment on the additional extension until 30 April 2021 as requested by the Appellant.
43. On 14 April 2021, the Athlete sent an email to the CAS Court Office which could be understood as an objection to the additional extension requested by the Appellant.
44. On 15 April 2021, the CAS Court Office communicated to the Parties that unless it heard otherwise by 16 April 2021, it would understand from the Athlete's email that she objected to the mentioned request for extension until 30 April 2021.
45. On 15 April 2021, the Athlete sent an email to the CAS Court Office expressly objecting the aforementioned request for extension.
46. On 19 April 2021, the CAS Court Office informed the Parties that in light of the Athlete's objection, the issue of the request for extension until 30 April 2021 would be decided by the President of the CAS Appeals Arbitration Division, who decided on 20 April 2021 to grant it.
47. On 26 April 2021, on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present dispute had been constituted as follows:

Sole Arbitrator: Mr. Jordi López Batet, Attorney-at-law in Barcelona, Spain.
48. On 30 April 2021, RUSADA filed its Appeal Brief, seeking the following relief:

"138. The Appellant respectfully requests the Panel to:

138.1 The Decision be set aside.

138.2 *The Respondent be found to have committed an anti-doping rule violation contrary to the ADR, with the appropriate sanction being a four-year period of Ineligibility, with credit being applied in respect of the provisional suspension.*

138.3 *Such further Consequences as deemed appropriate be imposed.*

138.4 *The conditions applicable to the period of Ineligibility should be those as specified in ADR article 10.12.1.*

138.5 *Costs be awarded to the Appellant in accordance with Rule 64.4 and Rule 64.5”.*

49. On 4 May 2021, the CAS Court Office invited the Athlete to file her Answer within 20 days.
50. The Athlete did not file her Answer within the prescribed deadline.
51. On 7 May 2021, the Appellant sent a short summary of its appeal to the Athlete by email.
52. On 9 June 2021, the CAS Court Office communicated to the Parties, *inter alia*, that (i) it had not received the Athlete’s Answer, (ii) nevertheless, the Sole Arbitrator would proceed with the arbitration and deliver an award pursuant to Article R55 of the CAS Code, and (iii) they were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties’ written submissions.
53. On 12 June 2021, the Athlete sent the following email to the CAS Court Office:

“hello, I have no additional information, all the evidence of my innocence is in the case, I have nothing to add, when the B sample was opened, it did not confirm the presence of prohibited substances and my body should have been cleared of all charges and no repeated tests should be carried out, but the Laboratory considered do it your way. Test A and B differ from the appearance, this is already alarming for falsification, I have no additional information. I consider myself not guilty, sample B proved it, and I don’t know where the sample A of a different color came from, so I can’t say anything for it, let’s make DNA then my sample, suddenly it’s not mine at all”.
54. On 17 June 2021, the Appellant expressed its preference for a hearing being held in this case, while the Athlete said nothing in this respect.
55. On 13 July 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this case.
56. On 26 July 2021, after consulting the Parties on their availabilities, the CAS Court Office informed the Parties that the hearing would take place on 14 September 2021 by videoconference.
57. On 19 August 2021, the Appellant requested to postpone the hearing, to which the Athlete objected on 23 August 2021.

58. On 30 August 2021, the CAS Court Office communicated to the Parties that the Sole Arbitrator had decided to maintain the hearing on 14 September 2021, and issued the Order of Procedure of this case, on behalf of the Sole Arbitrator, which was duly signed by the Appellant on 2 September 2021.
59. On 2 September 2021, the Appellant requested again that the hearing be moved to a later date.
60. On 8 September 2021, the CAS Court Office, on behalf of the Sole Arbitrator, communicated to the Parties that the hearing was maintained for 14 September 2021.
61. On 8 and 9 September 2021, the Respondent was reminded by the CAS Court Office of her deadline to sign and send the Order of Procedure.
62. On 8 September 2021, the Athlete confirmed her participation at the hearing of 14 September 2021.
63. On 13 September 2021, the Athlete was reminded again to sign and send the Order of Procedure of this case.
64. On 13 September 2021, RUSADA sent an email to the CAS Court Office making some observations on the hearing and communicating that if the Athlete requested the hearing be postponed, it would not object to it.
65. On 13 September 2021, the CAS Court Office communicated to the Parties that the hearing was maintained for 14 September 2021 unless both Parties explicitly agreed to postpone it.
66. On 14 September 2021, a hearing was held by video-conference in these proceedings. The counsel to RUSADA Mr. Graham Arthur and the Athlete, assisted by an interpreter, attended the hearing. Ms. Andrea Sherpa-Zimmermann, CAS counsel, assisted the Sole Arbitrator at the hearing. After the Parties' opening statements, the witness-expert Dr. Anton Pohanka was examined. Finally, the Parties made their respective closing statements and a turn for rebuttal was also given to them. At the outset of the hearing, the Parties confirmed that they had no objections with regard to the constitution and composition of the Panel, and at the end of the hearing all the Parties expressly declared that they did not have any objections with respect to the procedure.

IV. SUBMISSIONS OF THE PARTIES

67. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each contention put forward by them. However, in considering and deciding upon the Parties' claims, the Sole Arbitrator, has carefully considered all the submissions made and the evidence adduced by the Parties, even if there is no specific reference to those submissions in this section of the Award or in the legal analysis that follows.

A. RUSADA

68. The Appellant's submissions, in essence, may be summarized as follows:

- (i) The Committee made a wrong application of the ADR and the WADA International Standard for Laboratories ("ISL") in the Appealed Decision.
- (ii) Contrary to the conclusion reached in the Appealed Decision, it has been duly accredited that the analysis of the Athlete's B Sample indeed confirmed the A Sample analysis, that is to say, presence of metabolites of Oxandrolone.
- (iii) The Athlete's A Sample tested positive for metabolites of Oxandrolone. In light of it, the B Sample was analyzed by way of the application of the Confirmation Procedure¹ for Oxandrolone metabolites, which did not result in the identification of such metabolites in the B Sample. As it is very rare that the analytical results of A Sample and B Sample differ, the Laboratory undertook an internal investigation into why the Confirmation Procedure of the B Sample had not produced the same result as the Confirmation Procedure in respect of the A Sample. As part of this investigation the Laboratory re-analyzed the A Sample, which identified again the presence of the metabolites of Oxandrolone. Then the Laboratory realized that the pH value of both Samples was not the same, in light of which and within the investigation that was being conducted by the Laboratory, a new B Sample Confirmation Procedure had to be conducted adjusting the pH levels. The result of this new Confirmation Procedure on the B Sample confirmed the results of the A Sample analysis, *i.e.* presence of Oxandrolone metabolites. These steps are consistent with the ADR and the ISL.

Bearing this in mind, the Committee was wrong by having taken the view that the first B Sample analysis was determinative and that thus, the analytical exercise in respect of the A Sample and the B Sample was then concluded. The Committee's interpretation of Article 6.5 ADR is incorrect: the unexpected finding from the Confirmation Procedure of the B Sample was not the end of the exercise, but rather the start of an internal investigation to clarify the discrepancy between the analytical results of the two samples, which is what took place herein: a further Confirmation Procedure was conducted on the B Sample after adjustment for pH, which is consistent with Article 5.2.4.3.2.9. of the ISL, that refers to repetition of Confirmation Procedures of B samples.

- (iv) The violation of presence was thus established and given that (i) Oxandrolone (the substance found in the Athlete's Samples) is not a Specified Substance and (ii) the Athlete could not demonstrate on a balance of probabilities that such violation was not intentional, a sanction of 4 years of Ineligibility shall be imposed on her. The explanations given by the Athlete on how Oxandrolone entered into her system are unsubstantiated as confirmed by the Laboratory's reports provided to the file, and the

¹ In accordance with the ISL (ed. 2.016), a Confirmation Procedure is an analytical test procedure whose purpose is to identify the presence or to measure the concentration/ratio of one or more specific Prohibited Substances, Metabolite(s) of a Prohibited Substance or Marker(s) of the Use of a Prohibited Substance or Method in a Sample.

Athlete cannot simply rely on her own words or on speculative theories to prove the origin of the substance or to accredit the unintentional ingestion of such substance.

B. The Athlete

69. The Athlete did not file an Answer to the Appeal Brief, but expressed her position on the case at the hearing and also in the proceedings of first instance in accordance with the documentation produced to the file by RUSADA. Her arguments may be summarized as follows:

- (i) The B Sample tested negative and this implies that no violation of presence can take place in accordance with the ADR. The Laboratory should not have carried out repeated tests.
- (ii) The A and B Samples were manipulated, as confirmed by the fact that the appearance of each of them is quite different. In fact, the urine contained in the bottles could possibly not be the Athlete's urine.
- (iii) The only explanation of the detection of Oxandrolone in the A Sample could be that the Athlete had intimate contacts with two athletes that would have consumed Oxandrolone, so in any event the entry of such Prohibited Substance into the Athlete would have been inadvertent and unintentional.
- (iv) Therefore, the Appealed Decision shall be confirmed.

V. JURISDICTION

70. Article R47 of the CAS Code provides the following:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. [...]”.

71. Articles 13.2, 13.2.1, 13.2.2 and 13.2.3 of the ADR read in the pertinent part as follows:

13.2. Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Recognition of Decisions and Jurisdiction.

The following decisions may be appealed exclusively as provided in Articles 13.2-13.6:

[...]

- *A decision that no anti-doping rule violation was committed.*

13.2.1. Appeals Involving International-Level Athletes or International Events

In cases arising from participation in an International Event or in cases involving International Level Athletes, the decision may be appealed exclusively to CAS.

13.2.2. Appeals Involving Other Athletes or Other Persons

13.2.2.1. In cases where Article 13.2.1 is not applicable, the decision may be appealed exclusively to CAS.

13.2.3. Persons Entitled to Appeal

In cases under Articles 13.2.1. and 13.2.2., the following parties shall have the right to appeal to CAS:

[...]

d) the RUSADA and (if different) the National Anti-Doping Organization of the Person's country of residence or countries where the Person is a national or licence holder.

[...].

72. The Appealed Decision, in its final part, reads as follows:

Pursuant to article 13 of the All-Russian Anti-Doping Rules, the decision of the Disciplinary Anti-Doping Committee of RUSADA Anti-Doping Agency may be appealed to Court of Arbitration for Sport in the city of Lausanne, Switzerland, within 21 (twenty-one) days.

73. The Sole Arbitrator notes that (i) the Appealed Decision declares that the Athlete did not commit an anti-doping rule violation, (ii) the ADR stipulate that decisions of the kind involved herein are appealable to CAS, being RUSADA one of the parties with right to appeal these decisions, (iii) the Appealed Decision expressly mentions that it can be appealed before the CAS in accordance with Article 13 of the ADR and (iv) none of the Parties has objected CAS jurisdiction to deal with this case.

74. Therefore, in accordance with Article R47 of the CAS Code and the provisions cited above, CAS has jurisdiction to decide the present matter.

VI. ADMISSIBILITY

75. Article R49 of the CAS Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

76. Article 13.6 of the ADR reads in the pertinent part as follows:

“The time to file an appeal to CAS shall be twenty-one days from the date of the receipt of the decision by the appealing party. [...]”

77. RUSADA asserts (and the Athlete did not refute) that the grounds of the Appealed Decision were notified to RUSADA on 12 February 2021, and the Statement of Appeal was filed on 3 March 2021, hence within the 21-day term established by the applicable regulations.
78. In addition, the Athlete has not contested in any way the admissibility of the appeal filed by RUSADA.
79. It follows that the appeal is admissible.

VII. APPLICABLE LAW

80. Article R58 of the CAS Code reads 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”.

81. RUSADA submitted in its Appeal Brief and at the hearing that the present dispute shall be decided in accordance with the ADR and the ISL, while the Athlete did not make any specific statement with regard to the applicable law but somehow referred at the hearing to principles and provisions contained in such regulations.
82. The Sole Arbitrator concurs with the aforementioned view and will resolve this dispute according to the All-Russian Anti-Doping Rules approved by the order of the Ministry of Sport of the Russian Federation of 9 August 2016 No 947 and the WADA International Standard for Laboratories (ed. 2016), both in their condition of *“applicable regulations”* and of *“rules of law chosen by the parties”*.

VIII. MERITS

A. Introduction

83. In accordance with the facts in dispute and the request for relief submitted by the Parties to the Sole Arbitrator, the main issues to be resolved in this Award are the following:
 - i. Has the Athlete committed an anti-doping violation of presence of Prohibited Substance (metabolites of Oxandrolone)?
 - ii. In the affirmative, which are the consequences of such a violation?

B. Violation of the ADR

84. The Committee resolved in the Appealed Decision that the Athlete did not commit an anti-doping rule violation. In a nutshell, the Committee considered that:
- In accordance with Article 5.2.4.3.2.3. of the ISL, if the B Sample confirmation proves negative, the entire test shall be considered negative.
 - Article 6.5 ADR stipulates that further analysis of samples by RUSADA are only possible at the direction of WADA, RUSADA or the NADO that it initiated testing, before the results of the laboratory's analysis on both A and B Samples are reported to the Athlete as the ground of accusation of a potential anti-doping rule violation, and in this case the Laboratory carried out additional analysis of the A and B Sample:
 - o At its own initiative: no evidence was brought as to the fact that the additional analysis were carried out by instruction of WADA or RUSADA or that at least were agreed with them.
 - o After the Athlete was informed about the result of the first analysis.
 - The Laboratory's submission that what it conducted was a "repeated" analysis and not an "additional" analysis of the Athlete's Samples is of no avail, as the difference between the two concepts is merely semantic.
 - The reference made by the Laboratory to Article 5.2.4.3.1.4 ISL is unsound, as the Laboratory carried out two additional studies of the A Sample after the Athlete was informed about the results of the first analysis, and none of the previous samples was annulled.
 - The provisions of the WADA Code and the ADR cannot be violated in a specific case for the sake of protecting the Athlete's interests and clean sport in general. RUSADA had the opportunity to initiate and conduct further analysis of the Athlete's Samples with observation of Article 6.5 ADR but failed to do it.
 - Therefore, the results of the additional analysis of the A and B Samples of the Athlete obtained in violation of Article 6.5 ADR cannot be accepted as a proof for a violation of presence of Prohibited Substance by the Athlete, and no other proof of such violation has been brought to the file.
 - Other violations were committed during the data processing. Although any of them separately is a reason to invalidate results as per Article 3.2.3 ADR, they together make the impression of insufficient attention to the athlete's rights and the rules regarding data processing process.
85. The Appellant dissents from the Committee's approach and considers that no infringement of Article 6.5 ADR took place, as no "further analysis" in the sense of such article was conducted on the Athlete's Samples but simply the repetition of Confirmation Procedures in accordance

with the ISL. Bearing this in mind and considering that the repeated Confirmation Procedure on the Athlete's B Sample corroborated the finding of Oxandrolone's metabolites in her urine, the Appellant sustains that a violation of presence of Prohibited Substance took place, and that a sanction of Ineligibility of 4 years shall be imposed on the Athlete pursuant to Article 10.2.1.1. of the ADR as well as other Consequences as defined in the ADR.

86. The Sole Arbitrator shall start its analysis of the case by pointing out that the following relevant facts have been in his view duly established in accordance with the evidence taken in these proceedings:

- The Athlete's A Sample tested positive for presence of metabolites of Oxandrolone.
- The Athlete requested the opening and analysis of the B Sample, which did not confirm the result of the analysis of the A Sample, in light of which on 10 August 2018, RUSADA informed the Athlete of the following:

"On the results of B sample opening

Please, be informed that on 7th of August 2018 the Stockholm Anti-Doping laboratory conducted opening of Sample B4268811 in the presence of the independent witness.

Sample B4268811 didn't confirm the result of sample A4268811 analysis, but the reanalysis of sample A4268811 confirmed the presence of the prohibited substance in A4268811. The Laboratory also stated that the sample is contaminated with solid particles. The Laboratory concludes that the probable cause for this fact could either be a result of tampering the sample or a result of a greater bacterial contamination. As the Laboratory observed the difference in the (sic) of the samples appearance (photo is enclosed) and pH also showed a difference the investigation of possible sample tampering was initiated.

To confirm the fact of tampering the Laboratory, in accordance with WADA recommendations, will reopen samples A and B 4268811 to compare them in the following:

1-pH

2-SG

3-markers of microbial degradation

4-Steroid profile

5-Confounding factors of steroid profile

6-Other urine markers, if possible (concentration of salt and protein, creatinine)

7-DNA test (optional, pending)

You have the right to be present or to appoint an independent witness".

- Far from objecting to the actions conducted by the Laboratory on the A Sample and/or to the re-opening of the A and B Samples announced by RUSADA to her in the letter of 10 August 2018, the Athlete, in a communication sent to RUSADA on 15 August 2018, acknowledged that an investigation into possible tampering had been initiated and provided information that she deemed useful for the investigation.
- On 29 August 2018, RUSADA informed the Athlete that:
 - o The Laboratory had observed that the appearance of her A and B Samples was different, and that a preliminary check of pH showed a difference.
 - o As a result of it, her B Sample would be *“reanalyzed for metabolites of the prohibited substance oxandrolone adjusted for pH level”*.
 - o No pH adjustment had been made during the first B Sample analysis *“since it was not expected to have different pH for the A and the B sample”*, and that *“the analysis should therefore be repeated with proper adjustment with the knowledge that there is a difference between the A and the B sample”*.
 - o She had the right to be present at the opening and analysis of the B Sample.
- Again, far from objecting to the way of action announced by RUSADA in its letter of 29 August 2018, the Athlete requested RUSADA to reschedule the date of the B Sample analysis in the presence of her representative and to be notified of the date, time and place in which such procedure would take place.
- RUSADA informed the Athlete about the date of the B Sample re-opening and explained her the procedure of opening and analysis of such sample (see communication to the Athlete of 13 September 2018 referred to above). No objection was raised by the Athlete on such communication either. Moreover, in accordance with the Laboratory’s letter of 26 September 2018, the Athlete *“decided to send a representative to witness the opening procedure and primary analysis, the analysis of oxandrolone metabolites”* and the reopening procedure *“went as intended with no interference from the representative”*.
- The analysis of the B Sample with the pH adjustment revealed the presence of Oxandrolone metabolites.
- Once this positive result of the B Sample was communicated to the Athlete, her reaction, in lieu of contesting the result and/or the procedure leading to such result, was struggling to explain how the prohibited substance could have entered her body. She alleged that the presence of such Prohibited Substance could be due to some intimate contacts she had with other two athletes who allegedly would have taken Oxandrolone, and requested these Athletes to be tested. From that moment on, the exchange of correspondence held between the Athlete and RUSADA had mainly to do with the verification of the hypothesis raised by the Athlete to explain the origin of Oxandrolone metabolites in her urine. *Inter alia:*

- RUSADA asked the Laboratory about the feasibility of the Athlete’s explanation on the origin of the presence of Oxandrolone metabolites in her urine (oral sex with an athlete who had consumed it).
 - The Laboratory reported that it was highly unlikely that the Athlete’s AAF could be explained by oral sex relations with a third party.
 - Then the Athlete suggested that the origin of the Prohibited Substance could be due to a drug containing Oxandrolone that her “partner” would have taken in form of a pill under the tongue and to the fact that she and her partner would have kissed before oral sex (see Athlete’s email of 16 April 2020).
 - In light of it, RUSADA requested another expert report to the Laboratory on this new hypothesis, and the latter did not reject in abstract the possibility that Oxandrolone could be transferred by kissing but expected that kissing should be done during, or closely after sublingual administration.
 - The Athlete was notified that a hearing would be held in her case and she accepted it and even declared that she did not “mind hearings in absentia”.
87. This being established and in light of the Appealed Decision’s line of reasoning, the Sole Arbitrator shall firstly address whether the actions conducted by the Laboratory on the Athlete’s Samples are to be considered as a “further analysis” in the sense of Article 6.5 ADR as sustained by the Committee.
88. In this respect, the Sole Arbitrator shall point out that Article 6.5 ADR reads as follows:
- “6.5 Further Analysis of Samples*
- Any Sample may be stored (no more than 10 years) and subsequently subjected to further analysis for the purposes set out in Article 6.2 at any time exclusively by the following organizations: (a) WADA (at any time); or (b) RUSADA or the Anti-Doping Organization that initiated Testing at any time before both the A and B Sample analytical results (or A Sample result where B Sample analysis has been waived or will not be performed) have been communicated to the Athlete as the asserted basis for an Article 2.1 anti-doping rule violation. Such further analysis of Samples shall conform with the requirements of the International Standard for Laboratories and the International Standard for Testing and Investigations”.*
89. After putting this article in connection with the facts occurred in the present case and the evidence taken, the Sole Arbitrator notes that:
- The terminology used in the correspondence produced to the file on this particular matter is not precisely clear: it is true that at no point, neither RUSADA nor the Laboratory refers to the conduction of “further analysis” on the Athlete’s Samples, but at the same time no express reference is made by RUSADA, in the initial correspondence of 2018, to the “repetition of Confirmation Procedures” on such Samples. RUSADA and the Laboratory repeatedly referred to the term “re-analysis” in its correspondence

(see for instance letters of RUSADA of 10 and 29 August 2018, and letters of the Laboratory of 28 August and 26 September 2018).

- WADA’s opinion on this issue expressed in its email of 30 July 2020 does not help much either, as it is not precisely categorical; expressions like “*one may say*”, “*re-analysis may be understood*”, or “*this might all be semantics*” included in such email do not provide much certainty in this respect, in the Sole Arbitrator’s opinion.
- The Committee, in the Appealed Decision, refers to the concept of “additional analysis”, which even creates more uncertainty on the matter.
- In this scenario of ambiguity:
 - The witness-expert Dr. Anton Pohanka, Director of the Laboratory, confirmed in his declaration at the hearing, *inter alia*, that (i) the meaning of the term “re-analysis” used in the Laboratory’s letter of 28 August 2018 was not that of a “further analysis” as per Article 6.5 ADR, but of the repetition of a Confirmation Procedure, and (ii) what the Laboratory conducted on the Athlete’s Samples were repeated Confirmation Procedures on new Aliquots of such samples in accordance with Articles 5.2.4.1.4 and 5.2.4.3.2.9 ISL.
 - The Athlete did not propose the examination of other witnesses or experts that could potentially undermine Dr. Pohanka’s opinion expressed at the hearing.
 - The Athlete, neither in the samples’ analysis and results management procedures nor in the disciplinary proceedings conducted before the Committee, referred to or denounced a potential violation of Article 6.5 ADR. On the contrary, her acts revealed that she was in conformity with the procedures followed and that she was willing to collaborate in the clarification of the facts and in the investigation conducted.
- In accordance with Article 6.5 ADR, samples may be subjected to further analysis “*at any time before both the A and B Sample analytical results [...] have been communicated to the Athlete as the asserted basis for an Article 2.1 anti-doping rule violation*”.

In this respect, the Sole Arbitrator shall stress that RUSADA, in its letter of 10 August 2018, informed the Athlete about the results of the B Sample opening and analysis, but also about some abnormalities that deserved further investigation on her samples. It is not that RUSADA simply told the Athlete that the result of the analysis of the B Sample did not confirm the result of the A Sample, and that some time after, spontaneously and for no specific reason, RUSADA decided to conduct a new analysis on the A and B Samples. The content of the letter of 10 August 2018 does not suggest this and on the contrary, it clearly reveals in the Sole Arbitrator’s view that RUSADA informed the Athlete from the very beginning that the result of the analysis of the B Sample could be not reliable, that differences in the Samples’ appearance and pH had been observed and that new investigatory steps had to be followed. The same consistent line was followed

by further correspondence, as for instance the Laboratory's letter of 28 August 2018 and RUSADA's letter of 29 July 2018. Therefore, this correspondence of RUSADA of 10 August 2018 cannot qualify, in the Sole Arbitrator's view, as a communication of analytical results to the Athlete as the asserted basis for an Article 2.1 anti-doping rule violation.

90. Taking the aforementioned elements into consideration, the Sole Arbitrator does not share the Committee's view that Article 6.5 ADR was infringed, and that such an infringement shall lead to conclude that the Athlete did not violate Article 2.1. ADR.
91. With the evidence brought to these proceedings, the Sole Arbitrator shall not conclude that the action taken by the Laboratory on the Samples is to be qualified as a "further analysis" in the sense of Article 6.5 ADR. Even if both the Laboratory and RUSADA could have been more precise in the utilization of the terminology in their correspondence and reports, avoiding potentially confusing terms like "re-analysis", the global examination and assessment of the evidence taken in these proceedings reveal that the Laboratory conducted repeated Confirmation Procedures on the A and B Samples in accordance with the ISL. In particular, the clear statements made in this respect by Dr. Pohanka at the hearing not refuted by any other expert opinion, the terms of RUSADA's letter of 10 August 2018 explained above and the fact that the Athlete did not allege neither in the analysis of samples phase, nor in the results management process nor in the first instance disciplinary proceedings that an infringement of Article 6.5 ADR had taken place, leads the Sole Arbitrator to consider that such an infringement denounced by the Committee did not actually exist.
92. Finally, and for the sake of completeness in light of some of the considerations made in the Appealed Decision, the Sole Arbitrator shall also point out that:
 - After checking RUSADA's letter of 10 August 2018 and other subsequent correspondence produced to these proceedings, it is hardly credible (and the Sole Arbitrator dissents on this with the Committee) that, as sustained in the Appealed Decision, the further investigation on the Athlete's Samples was conducted at the sole initiative of the Laboratory. The Sole Arbitrator is convinced, after checking such correspondence, that while the Laboratory detected the abnormalities in the referred samples, it was RUSADA the one deciding to go ahead with the investigations.
 - There is no evidence on other potential violations allegedly committed during the data processing. This assertion made in the Appealed Decision is unsubstantiated, and the Athlete did not explain either which other violations were purportedly committed by RUSADA in this respect.
93. This being established (*i.e.* that Article 6.5 ADR was not infringed and thus, that the Appealed Decision, which is based on such assumption, shall be thus set aside), the Sole Arbitrator shall now analyze whether a violation of presence of Prohibited Substance as claimed by the Appellant took place or not, and in the affirmative, which the consequences of such a violation should be.

94. In this respect, the Sole Arbitrator shall firstly refer to the relevant parts of Articles 2.1 and 3 ADR, which read as follows:

“2. Presence of a Prohibited substance or its Metabolites or Markers in an Athlete’s Sample

2.1.1. It is each Athletes’ personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2. Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete’s B Sample is analyzed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s Sample; or where the Athlete’s B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation.

2.1.4. As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of certain Prohibited Substances than can also be produced endogenously.

3.1 Burdens and Standards of Proof

The RUSADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the RUSADA has established an anti-doping rule violation to the comfortable satisfaction of the 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. Where the Rules places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 Analytical methods or Decision Limits approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any Athlete or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. CAS, on its own initiative, may also inform WADA of any such challenge. At WADA’s request, the CAS panel shall

appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within ten (10) days of WADA's receipt of such notice and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence in such proceeding.

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the RUSADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2.3 Departures from any other International Standard or other anti-doping rule or policy set forth in the Code, these Rules or Anti-Doping Organization rules which did not cause an Adverse Analytical or other anti-doping rule violation shall not invalidate such evidence or result. If the Athlete or other Person establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the RUSADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation. [...]"

95. The Sole Arbitrator shall point out that (i) the analysis of both the A and the B Samples of the Athlete finally revealed the presence of a Prohibited Substance (Oxandrolone metabolites) in her urine, (ii) the Athlete did not challenge the analytical methods used by the Laboratory in this case, so these are presumed to be valid (Article 3.2.1. ADR), and (iii) no departure from the ISL or from a policy set forth in the ADR has been established. For the sake of completeness, it shall be also asserted that (a) the allegations made by the Athlete on the potential manipulation of the A and B Samples are not supported on any evidence and can neither distort nor have any influence on the conclusions referred to in points (i) to (iii) in this paragraph and (b) that the clerical error made by the Laboratory in the chemical name of one of the metabolites while initially reporting the results in ADAMS is also irrelevant as according to the Laboratory's statements made in the email of 27 March 2020 (not contradicted by other evidence in these proceedings), *"the clerical error does not concern the status of the sample [...]"* and *"the AAF for both A sample and B sample still stands"*.
96. Therefore, taking the aforementioned circumstances and the provisions set out in Articles 2 and 3 of the ADR into account, the Sole Arbitrator considers that RUSADA has discharged its burden of proof to establish the anti-doping rule violation of presence under Article 2.1 ADR and thus, that the Athlete committed such a violation.

C. Consequences of the violation

C.1 General framework

97. In its Appeal Brief, RUSADA requests the Athlete be found to have committed an anti-doping rule violation and that as a result of it:

- The Athlete is sanctioned with a four-year period of Ineligibility, with credit being applied in respect of the provisional suspension already served by her.
- Such further Consequences as deemed appropriate are also imposed on the Athlete.
- The conditions applicable to the period of Ineligibility should be those “*as specified in ADR article 10.12.1 (sic)*”².

98. It shall be noted in this respect that the ADR defines the Consequences of Anti-Doping Rule Violations (Consequences) as follows:

“An Athlete’s or other Person’s violation of an anti-doping rule may result in one or more of the following:

(a) Disqualification is an invalidation of the Athlete’s results in a particular Competition or Event, with all resulting Consequences including forfeiture of any medals, points and prizes;

(b) Ineligibility is a ban of the Athlete or other Person on account of an anti-doping rule violation for a specified period of time from participating in any Competition or other activity or funding as provided in Article 10.12.1;

(c) Provisional Suspension is a temporary ban of the Athlete or other Person from participating in any Competition or activity prior to the final decision at a hearing conducted under Article 8;

(d) Financial Consequences are the financial sanction imposed for an anti-doping rule violation or to recover costs associated with an anti-doping rule violation;

(e) Public Disclosure or Public Reporting is the dissemination or distribution of information to the general public or Persons beyond those Persons entitled to earlier notification in accordance with Article 14. Teams in Team Sports may also be subject to Consequences as provided in Article 11”.

² In the Sole Arbitrator’s view, the reference to Article 10.12.1 ADR is due to a clerical mistake and shall be understood being made to Article 10.11.1 ADR, as there is no Article 10.12.1 in the ADR and Article 10.11.1 ADR refers to “*Prohibition against Participation during Ineligibility*”, which is consistent with this petition made by the Appellant under that point.

C.2 Ineligibility

99. For the determination of the sanction of Ineligibility to be imposed on the Athlete for the anti-doping rule violation, the Sole Arbitrator shall depart from the provisions of Article 10.2 ADR, which in the pertinent part reads as follows:

“The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1. The period of Ineligibility shall be four years where:

10.2.1.1. The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. [...].

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term ‘intentional’ is meant to identify those Riders who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. [...].”

100. In accordance with Article 10.2. ADR, the standard period of Ineligibility is 4 years, if the anti-doping rule violation does not involve a Specified Substance and the Athlete cannot establish that the anti-doping rule violation was not intentional.
101. In the case at hand, the Athlete’s violation involves the Prohibited Substance Oxandrolone, which is not a Specified Substance, being thus for the Athlete to prove (by a balance of probability, as per Article 3.1. ADR) that her violation was not intentional if she wants to avoid the 4-year standard period of Ineligibility.
102. After analysing the evidence brought to the proceedings, the Sole Arbitrator concludes that the Athlete failed to establish that the anti-doping violation was not intentional. She neither proved, nor attempted to prove, such lack of intentionality and what is more, she did not even establish, and less accredited, how Oxandrolone entered her system. The explanations she offered on this (Oxandrolone’s presence in her urine caused by intimate contacts held with two athletes who would have allegedly consumed such substance) are, in the Sole Arbitrator’s opinion, totally unsupported and based only on her own words, with no documentary, witness or expert evidence having been brought by the Athlete to back her statements. In this respect, it shall be recalled that CAS jurisprudence has repeatedly stated that (i) the accreditation of the Prohibited Substance’s origin shall be based on real evidence and not on mere speculations and that the mere statement by the athlete on the origin of the Prohibited Substance without evidence sustaining this statement is insufficient for the purposes of proving how the substance entered the athlete’s body (CAS 2006/A/1067, CAS 2014/A/3615, or CAS 2014/A/3820) and (ii) for an anti-doping rule violation to be committed non-intentionally, the Athlete must prove that, by a balance of probability, she did not know that her conduct constituted an anti-doping rule

violation or that there was no significant risk of an anti-doping rule violation (CAS 2016/A/4626).

103. Therefore, there is no reason or evidence leading to establish that the Athlete's violation was unintentional and consequently, the Sole Arbitrator finds that the standard period of Ineligibility of 4 years shall apply and be imposed on her.

104. In addition, the Sole Arbitrator shall also indicate that:

- The Athlete has not requested the elimination or the reduction of the period of ineligibility based on any of the circumstances foreseen in Articles 10.4 to 10.6 ADR. In any event, the Sole Arbitrator, after analyzing the facts and evidence brought to the proceedings, does not find that the Athlete can qualify for such an elimination or reduction of the standard period of Ineligibility.
- The Prohibition against Participation during the Ineligibility period as per Article 10.11.1 ADR shall apply on the Athlete, as requested by the Appellant. The provisions set out in sections 2 to 4 of Article 10.11 ADR will also apply accordingly.

105. In relation to the commencement of the period of Ineligibility, Article 10.10 ADR stipulates in the pertinent part that:

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

10.10.1 Delays Not Attributable to the Athlete or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the RUSADA may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

10.10.2. Timely Admission

Where the Athlete or other Person promptly (which, in all events, for an Athlete means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by RUSADA, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of Ineligibility already has been reduced under Article 10.6.3.

10.10.3. Credit for Provisional Suspension or Period of Ineligibility Served

If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal. [...]”

106. Applying this provision to the case at hand, the Sole Arbitrator considers that:

- The period of Ineligibility shall commence on the date of this Award, as:
 - o Article 10.10.1 ADR exception do not apply to the case at hand. The Athlete failed to allege that a delay of the kind referred to in this article ever existed, and after analyzing the file, the Sole Arbitrator is of the opinion that at least partially, the delay in the conduction of the procedures finally leading to the Appealed Decision was attributable to the Athlete in light of the various explanations given by her on the origin of the Prohibited Substance found in her body and the correlative actions that RUSADA had to conduct as regards of it (including the request for expert opinions to the Laboratory).
 - o The Athlete did not timely admit the anti-doping rule violation in the sense of Article 10.10.2 ADR.
- Given that on 19 July 2018, the Athlete was informed of the provisional suspension imposed on her and that it has not been disputed that the Athlete observed the terms of such suspension, she must receive credit for the period of provisional suspension served.

C.3 Other consequences

107. Finally, the Sole Arbitrator shall analyze and decide on RUSADA’s petition on the imposition of further Consequences to the Athlete.

108. Article IX ADR stipulates that:

“An anti-doping rule violation in Individual Sports in connection with an In-Competition testing automatically leads to Disqualification of the results obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes”.

109. Article 10.8 ADR refers to the disqualification of subsequent results in the following terms:

“Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article IX, all other competitive results of the Athlete obtained from the date a positive Sample

was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes”.

110. Finally, it shall be also mentioned in this respect that Article 10.12 ADR stipulates that “a mandatory part of each sanction shall include automatic publication, as provided in Article 14.3.”, the latter reading as follows:

“14.3 Public Disclosure

14.3.1 The identity of any Athlete or other Person who is asserted by RUSADA to have committed an anti-doping rule violation, may be Publicly Disclosed by RUSADA only after notice has been provided to the Athlete or other Person in accordance with Article 7.3, 7.4, 7.5, 7.6 or 7.7., and to the applicable Anti-Doping Organizations in accordance with Article 14.1.2.

14.3.2 No later than twenty days after the fact of anti-doping rule violation has been determined in a final appellate decision under Article 13.2.1 or 13.2.2, or the right to appeal has been waived, or a hearing in accordance with Article VIII has been waived, or the assertion of an anti-doping rule violation has not been timely challenged, the RUSADA must Publicly Report the disposition of the matter including the sport, the anti-doping rule violated, the name of the Athlete or other Person committing the violation, the Prohibited Substance or Prohibited Method involved and the Consequences imposed. The RUSADA must also Publicly Report within twenty days the results of final appeal decisions concerning anti-doping rule violations, including the information described above.

14.3.3. In any case where it is determined, after a hearing or appeal, that the Athlete or other Person did not commit an anti-doping rule violation, the decision may be Publicly Disclosed only with the consent of the Athlete or other Person who is the subject of the decision. The RUSADA shall use reasonable efforts to obtain such consent, and if consent is obtained, shall Publicly Disclose the decision in its entirety or in such redacted form as the Athlete or other Person may approve.

14.3.4. Publication shall be accomplished at a minimum by placing the required information on the RUSADA website and leaving the information up for the longer of one month or the duration of any period of Ineligibility.

14.3.5. Neither RUSADA nor All-Russian Sports Federations, nor any official of either body, shall publicly comment on any pending case (as opposed to general description of process and science) except in response to public comments attributed to the Athlete or other Person against whom an anti-doping rule violation is asserted, or other representatives.

14.3.6. The mandatory Public Reporting required in Article 14.3.2 shall not be required where the Athlete or other Person who has been found to have committed an anti-doping rule violation is a Minor. Any optional Public Reporting in a case involving a Minor shall be proportionate to the facts and circumstances of the case”.

111. In the present case, the anti-doping rule violation took place in connection with an In-Competition test, which in accordance with Article IX ADR, leads to the automatic disqualification of the Athlete's results obtained in the Competition. With regard to other competitive results of the Athlete obtained from the date of the positive sample's collection, the Sole Arbitrator does not see a reason that would justify the derogation from the principle set forth in Article 10.8 ADR. Consequently, the Athlete's results from 21 June 2018 (date of the sample collection) shall also be disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes. Finally, with regard to the Public Disclosure of the sanction, the Sole Arbitrator considers that it shall be made in accordance with the provisions set out in Article 14.3 ADR.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Russian Anti-Doping Agency against the Decision No. 5/21 rendered by the Disciplinary Anti-Doping Committee of Association Russian Anti-Doping Agency "RUSADA" on 26 August 2020 is upheld.
2. The Decision No. 5/21 rendered by the Disciplinary Anti-Doping Committee of Association Russian Anti-Doping Agency "RUSADA" on 26 August 2020 is set aside.
3. Ms. Ksenia Maximova is found to have committed a violation of Article 2.1 of the All-Russian Anti-Doping Rules.
4. Ms. Ksenia Maximova is imposed a period of Ineligibility of four (4) years. The period of Ineligibility shall commence on the date of this decision, with credit being applied in respect of the provisional suspension already served by Ms. Maximova. The conditions applicable to the period of Ineligibility should be those as specified in Article 10.11.1 of the All-Russian Anti-Doping Rules.
5. All the results obtained by Ms. Ksenia Maximova at the Russian Weightlifting Cup 2018 held in the city of Salavat and any other results obtained by her from 21 June 2018 are disqualified.
6. This Award is to be publicly disclosed in accordance with the provisions of Article 14.3 of the All-Russian Anti-Doping Rules.
7. (...).
8. (...).
9. All other and further claims or prayers for relief are dismissed.