



Arbitration CAS ad hoc Division (OG PyeongChang) 18/003 Alexander Legkov, Maxim Vylegzhanin, Evgeniy Belov, Alexander Bessmertnykh, Evgenia Shapovalova, Natalia Matveeva, Aleksandr Tretiakov, Elena Nikitina, Maria Orlova, Olga Fatkulina, Alexander Rumyantsev, Artem Kuznetsov, Tatyana Ivanova, Albert Demchenko, Sergei Chudinov v. International Olympic Committee (IOC), award of 9 February 2018

Panel: Mrs Carol Roberts (Canada), President; Mrs Zali Steggall (Australia); Mr Bernhard Welten (Switzerland)

*Multiple sports*

*Establishment of an invitation list of athletes to participate in the Olympic Games*

*Legal characterisation of the process*

*Fairness of the process*

*Consideration of individual decisions dismissing allegations of ADRV in the evaluation of the process*

- 1. The process created by the IOC to establish an invitation list of Russian athletes and support staff cannot be described as a sanction; rather, it is more properly characterized as an eligibility decision. In establishing a process that provided individual athletes and support staff with the opportunity to be invited to participate, the IOC did not deprive the athletes and support staff of any “right” they may have had to participate. The process was designed to protect the rights of individual Russian athletes and support staff, who were not been implicated in the state-sponsored doping scheme. The process was a considered and measured response to the confirmed state-sponsored doping scheme.**
- 2. A process in which two different bodies have, in good faith and in a consistent manner, developed and applied criteria rationally connected to their mandates, aiming at enabling individual Russian athletes and support staff considered to be “clean” or for whom there were no suspicions that they were implicated in, or protected by, the Russian doping scheme, to compete; and in which the assessments were made anonymously to avoid any possible discrimination or bias, is neither arbitrary, unfair or unreasonable.**
- 3. CAS individual decisions which decided that there was insufficient evidence to conclude that some athletes had committed an Anti-Doping Rule Violation are not to be taken into consideration when deciding whether the process implemented by the IOC, in circumstances where the ROC was suspended and has failed to rebut the evidence of systemic manipulation of the anti-doping rules and system in Russia, was permissible and provided a fair opportunity for some athletes to be offered an opportunity to participate at the Games.**

## 1 PARTIES

- 1.1 Alexander Legkov, Maxim Vylegzhanin, Evgeniy Belov, Alexander Bessmertnykh, Evgenia Shapovalova, Natalia Matveeva, Aleksandr Tretiakov, Elena Nikitina, Maria Orlova, Olga Fatkulina, Alexander Rummyantsev, Artem Kuznetsov, Tatyana Ivanova, Albert Demchenko, Sergei Chudinov (hereinafter: the “Applicants”) are all Russian athletes or coaches who have not been invited to participate at the XXIII Olympic Winter Games in Pyeongchang (hereinafter: the “OWG 2018”).
- 1.2 The Respondent is the International Olympic Committee (hereinafter: the “IOC”), the organisation responsible for the Olympic Movement, having its headquarters in Lausanne, Switzerland. One of its primary responsibilities is to organise, plan, oversee and sanction the summer and winter Olympic Games, fulfilling the mission, role and responsibilities assigned by the Olympic Charter.

## 2 FACTS

- 2.1 Although the Panel has considered all of the submissions and arguments of the Parties, it has set out only a summary of the facts relevant to its conclusion.

### A. Background

- 2.2 On 3 December 2014, the German television channel ARD aired the documentary “*Top Secret Doping: How Russia makes its Winners*”. The documentary alleged the existence of a sophisticated and well-established system of state-sponsored doping within the governing body for the sport of athletics, the All-Russia Athletics Federation. The documentary implicated Russian athletes, coaches, national and international sport federations, the Russian Anti-Doping Agency and the Moscow WADA-accredited laboratory.
- 2.3 In response to this documentary, the World Anti-Doping Agency (hereinafter: “WADA”) formed an Independent Commission to conduct an investigation into, among other things, doping practises and corrupt practices around sample collection and results management as well as the ineffective administration of anti-doping processes in Russia and the accredited laboratory based in Moscow and the Russian Anti-Doping Agency. In its 9 November 2015 Report, the Independent Commission reported that it had identified systemic failures within Russia that prevented or diminished the possibility of an effective anti-doping program and recommended that WADA withdraw its accreditation of the Moscow laboratory. The accreditation was withdrawn and to date, the Moscow laboratory has not been reinstated.
- 2.4 On 8 May 2016, the American CBS newsmagazine 60 Minutes, broadcast a story alleging doping during the 2014 Winter Games in Sochi. On 12 May 2016, the New York Times published the article “Russian Insider Says State-Run Doping Fueled Olympic Gold,” based on interviews with Grigory Rodchenkov, former head of the Moscow laboratory, regarding doping at the 2014 Winter Games in Sochi.

- 2.5 On 19 May 2016, WADA appointed Professor Richard McLaren to investigate Dr. Rodchenkov's allegations of state-sponsored doping and cover-up attempts involving athletes. The first part of Professor McLaren's report issued July 16 July 2016 (hereinafter: the "McLaren Report #1") found evidence of systematic, state-sponsored manipulation of the doping control process that occurred before the 2014 Winter Olympics in Sochi and leading up to the 2016 Olympics in Rio de Janeiro. The second McLaren Report issued 9 December 2016 confirmed the existence of an institutional conspiracy across summer and winter sports and identified athletes who participated with Russian officials within the Ministry of Sport and its infrastructure for the purposes of manipulating doping controls. Professor McLaren determined that the athletes were not acting individually but within the organized infrastructure he found in the McLaren Report #1. Professor McLaren further identified over 1000 Russian athletes competing in summer, winter and Paralympic sports could be identified as being involved in or benefitting from manipulations to conceal positive doping tests.
- 2.6 Following the release of the McLaren Report #1 and because Professor McLaren did not have the authority to bring Anti-doping Rule Violation cases against individual athletes, the IOC then established two Disciplinary Commissions. The first chaired by Samuel Schmid, former President of the Swiss Confederation, was to establish the facts on the basis of documented, independent and impartial evidence (hereinafter: the "Schmid Commission").
- 2.7 The Schmid Commission confirmed the involvement of government officials in, among other things, cheating in the reporting mechanism in ADAMS, creating false biological profiles and tampering with urine samples by swapping "dirty" urine with "clean" urine. The Commission recommended that the IOC take appropriate measures to effectively sanction the existence of a systemic manipulation of the anti-doping rules and system in Russia while protecting the rights of the individual Russian clean athletes.
- 2.8 The second commission, chaired by IOC Member Professor Denis Oswald, was tasked with investigating alleged doping violations by individual Russian athletes who participated at the 2014 Olympic Winter Games in Sochi (hereinafter: the "Oswald Commission"). The Oswald Commission re-analyzed all of the samples collected from Russian athletes at the 2014 Olympic Winter Games in Sochi that were available to the IOC. The Oswald Commission conducted hearings for all active athletes who could qualify for the OWG 2018.

## **B. Decisions taken by IOC leading to this Application**

- 2.9 On 5 December 2017, based on the Schmid Commission's recommendations, the IOC Executive Board (hereinafter: the "IOC EB") decided to suspend the Russian Olympic Committee (hereinafter: the "ROC") with immediate effect.
- 2.10 At the same time, the IOC EB established a two-stage process to allow "clean" Russian athletes to compete at the OWG 2018. The first step was to delegate to an independent panel (the Invitation Review Panel (hereinafter: the "IRP")) the responsibility of developing a list from which the IOC would ultimately issue invitations. The IRP was to develop the list according to the following guidelines:

*“1. The invitation list will be determined, at its absolute discretion, by a panel chaired by Valerie Fourneyron, Chair of the ITA. The [IRP] will include members of the Pre-Games Testing Task Force: one appointed by WADA, one by the DFSU and one by the IOC, Dr Richard Budgett.*

*2. This panel will be guided in its decisions by the following principles:*

*a) It can only consider athletes who have qualified according to the qualification standards of their respective sport.*

*b) Athletes must be considered clean to the satisfaction of this panel:*

*- Athletes must not have been disqualified or declared ineligible for any Anti-Doping Rule Violation*

*- Athletes must have undergone all the pre-Games targeted tests recommended by the Pre-Games Testing Task Force.*

*- Athletes must have undergone any other testing requirements specified by the panel to ensure a level playing field.*

*The IOC, at its absolute discretion, will ultimately determine the athletes to be invited from the list.*

*3. These invited athletes will participate, be it in individual or team competitions, in the Olympic Winter Games PyeongChang 2018 under the name “Olympic Athlete from Russia (OAR)”. They will compete with a uniform bearing this name and under the Olympic Flag. The Olympic Anthem will be played in any ceremony.*

*4. These invited athletes will enjoy the same technical and logistical support as any other Olympic athlete”.*

2.11 No appeal was taken from the IOC’s decision to suspend the ROC, to establish the IRP or to the discretionary powers invested in the IRP.

2.12 The IOC provided guidance regarding the criteria to be applied by the IRP as follows:

*“D. Working methodology:*

*The panel will decide on the criteria, in accordance with the IOC Executive Board decision, to determine the list of athletes, support staff and officials to be provided to the OAR Implementation Group for consideration for an invitation. ...*

*...*

*E. Criteria used by the panel to determine the list of athletes to be submitted to the OAR Implementation Group for consideration for an invitation place:*

*1. Athletes who have qualified according to the qualification standards of their respective sports*

*→ The IOC will provide to the panel a revised list of athletes for whom the ROC would like to apply for an invitation and an analysis of the sport qualifications, discipline by discipline.*

*2. Athletes must be considered clean*

*a. Athletes must not have been disqualified or declared ineligible for any Anti-Doping Rule Violation.*

*→ This applies to an athlete’s entire career, including junior competitions.*

*→ This applies to all athletes who were sanctioned and disqualified by the Oswald Commission*

*b. Athletes must have undergone all the pre-Games targeted tests recommended by the Pre-Games Testing Task Force.*

...

*c. Athletes must have undergone any other testing requirements specified by the panel to ensure a level playing field*

→ *Subject to athletes passing, to the satisfaction of the panel, points a and b above, the panel may decide whether there are additional testing requirements which should be met on a case-by-case basis. For this, and considering the Pre-Games Task Force recommendations, the panel may look into the conditions in which testing was conducted and the type of test which were used.*

→ *Additional testing requirements should be decided in cognisance of the increased standard of testing that the Pre-Games Testing Taskforce has already applied to Russian athletes”.*

- 2.13 The IOC EB did not limit the ICP to a list of criteria to determine the invitation list; rather, it entrusted the IRC to use *“all the available information and intelligence at its disposal”*.
- 2.14 The ROC submitted a list of 500 athletes for potential inclusion on the invitation list. After conducting an individual assessment of each athlete, the ICP considered that 389 of the 500 proposed athletes could be included in that list. The Panel notes that two retired athletes being coaches now, Albert Demchenko and Sergei Chudinov are now coached and were not part of the ROC long list of 500 athletes assessed by the IRP.
- 2.15 The IRP then submitted the list to the IOC’s Olympic Athlete from Russia Implementation Group (hereinafter: the “OAR IG”), a panel chaired by Ms. Nicole Hovertsz, an IOC EB member, to determine which athletes would be issued an invitation from the initial invitation list.
- 2.16 On 19 January 2018, the ROC was asked to propose which athletes, from those on the invitation list, would fill the quota places earned in each sport, discipline and event. Although 209 of the 211 places could have been filled with the athletes cleared to receive an invitation by the IOC, the ROC eventually provided a list of 169 athletes who were invited to compete as Olympic Athletes from Russia (hereinafter: the “OAR”).
- 2.17 On 25 January 2018, the IRP published seventeen criteria it considered for each athlete in developing the pool of athletes who could be invited by the IOC to take part in the OWG 2018 as an OAR. The criteria, which were noted to be non-exhaustive, included the athlete’s anti-doping rule violation history, evidence of suspicious Steroid Profile values, e-mails, DNA inconsistencies and irregularities of the Athlete Biological Passport, steroid profile manipulation as well as evidence provided by the McLaren and Schmid reports and the Oswald Commission; information provided by various departments of WADA and intelligence provided by Olympic Winter Sports Federations regarding athletes and/or support personnel and the Pre-Games Testing Taskforce.
- 2.18 On 1 February 2018, two CAS Panels issued several awards (CAS 2017/A/5379 *et al.*, “the Sochi appeals”) which, although reasons have not been released, reportedly decided that

there was insufficient evidence to conclude that the Applicants, amongst others, had committed an Anti-Doping Rule Violation (“ADRV”). Following these decisions, the Applicants as well as the ROC requested that the Applicants be invited to the OWG 2018.

2.19 On 5 February 2018, the IOC declined the request.

### **3 CAS PROCEEDINGS**

3.1 On 7 February 2018 at 8.30 am (time of Pyeongchang), the Applicants filed an Application with the CAS Ad Hoc Division against the Respondent with respect to their non-invitation.

3.2 On the same day, at 9.00 am (time of Pyeongchang), the CAS Ad Hoc Division notified the Application to the Respondent.

3.3 On 7 February 2018 at 10.50 am (time of Pyeongchang), the CAS Ad Hoc Division notified the Parties of composition of the Panel:

- Ms. Carol Roberts, as President
- Ms. Zali Steggall, as arbitrator
- Mr. Bernhard Welten, as arbitrator.

3.4 On 7 February 2018 at 11.20 am (time of Pyeongchang), the Panel informed the Parties that, in view of the fact that the arguments raised by the Applicants were in a large part similar to the ones of the Applicants in CAS OG 18/002, the hearing was to be held on 7 February 2018 at 1.00 pm (time of Pyeongchang) together with the hearing in the latter case.

3.5 On 7 February 2018 at 1 pm (time of Pyeongchang), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr. William Sternheimer, Deputy Secretary General of the CAS, Ms. Andrea Zimmermann, Counsel to the CAS, and following persons also attended the hearing: for the Applicants, Mr. Christopher Boog and Mr. Philippe Bärtsch, counsels; for the Respondent, Mr. François Carrard, Mr. Jean-Pierre Morand, Mr. Nicolas Zbinden, counsels, Ms. Anne van Ysendyck, Legal Affairs Director of the IOC, Ms. Nicole Hoevertsz, IOC EB Member, and Mr. Gunter Younger, Head of the WADA Intelligence & Investigations Department, by Skype.

3.6 The hearing was adjourned to permit the IOC to provide a written response to these proceedings which was received at 11.55 pm (time of Pyeongchang) on 7 February 2018.

3.7 On 8 February 2018 at noon (time of Pyeongchang), the hearing resumed in the present matter and the Parties made their final submissions. In addition to the persons mentioned above, the following persons were present: for the Applicants, Mr. Albert Demchenko, coach, Ms. Tatyana Ivanova, athlete, Ms. Elena Nikitina, athlete, Mr. Sergey Chudinov, coach, by telephone.

3.8 There were no objections to the constitution of the Panel or to the Parties’ rights to be heard and treated equally in these proceedings.

#### 4 PARTIES' SUBMISSIONS

4.1 The Parties' submissions and arguments are summarized as follows:

##### A. Applicants' Argument and Requests for Relief

- a) The IOC's refusal to invite the Applicants to participate in the OWG 2018 is unlawful and discriminatory;
- b) The IOC's decision not to invite the Applicants is an impermissible attempt to circumvent the CAS decisions of 1 February 2018 which cleared the Applicants and the IOC is trying to impose on the Applicants the very sanction they did not obtain in the CAS proceedings;
- c) The admission criteria applied by the IRP and the OAR IG do not have a legal basis; go far beyond the requirements set out by the IOC on 5 December 2017; are discriminatory by their very nature since they apply only to Russian athletes; and constitute a sanction that is incompatible with the mandatory sanctions framework of the WADA Code;
- d) The Applicants, who were cleared having committed any anti-doping rule violations and who have undergone all of the pre-Games testing requirements instituted by the IOC, are prevented from participating at the OWG 2018 for no valid reason;
- e) It is unclear which criteria were applied, how they were applied, which factors were taken into account by the IRP and OAR IG and how they were weighed. The lack of transparency in the selection process makes it impossible for the Applicants to rebut the allegations against them and to assert their fundamental rights; and
- f) The IOC's refusal to invite the Applicants raises suspicions that they would not be clean athletes, is arbitrary and discriminatory and infringes the Applicants' personality rights under Swiss law.

4.2 The Applicants' request for relief is as follows:

- “(1) the Panel find that the Applicants each qualify to participate in the XXIII Olympic Winter Games in PyeongChang 2018, as Olympic Athletes from Russia or as coach, as the case may be;  
(2) the Panel order the IOC to invite each of the Applicants to participate in the XXIII Olympic Winter Games in PyeongChang 2018 as Olympic Athletes from Russia or as coach, as the case may be;  
(3) the Panel order any other relief it may deem just or appropriate;  
(4) the IOC be ordered to pay the costs of the arbitration (if any) and the Applicants' legal fees and expenses”.*

##### B. Respondent's Arguments and Requests for Relief

4.3 The Respondent's submission may be summarized as follows:

- a) The IOC's decision to suspend the ROC and establish a process for allowing certain Russian athletes to compete at the OWG 2018 is different from proceedings relating to anti-doping rule violations;
- b) The invitation process established by the IOC, while discretionary, was justified and correctly and fairly implemented for these Applicants;

- c) The process was not meant to discriminate against Russian athletes; rather, it offered the possibility of participation in the OWG 2018, which had been closed to a significant number of them following the suspension of the ROC.
- d) The Respondent requests that the Panel reject the Applications.

## 5 JURISDICTION

5.1 Article 61.2 of the Olympic Charter provides as follows:

*“61 Dispute Resolution*

*[...]*

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

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

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

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

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

- 5.3 The Applicants, as individuals, are not parties to the Olympic Charter. As such, the Olympic Charter arbitration clause is not binding upon them. However, because the Applicants wish to participate in the OWG 2018, they submit that the arbitration clause constitutes an offer to arbitrate, which they accept, without prejudice to their right to seek interim relief from another court of competent jurisdiction.
- 5.4 The CAS Ad Hoc Division has jurisdiction to deal with an application only if it concerns disputes which “*arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games*”. In other words, an application is only admissible if the dispute arose after 30 January 2018, or 10 days before the Opening Ceremony on 9 February 2018.



5.5 The decision not to invite the Applicants was taken by the IOC on 5 February 2018; therefore, the CAS Ad Hoc Division has jurisdiction.

## 6 APPLICABLE LAW

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

## 7 DISCUSSION

### A. Legal framework

7.1 These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport (hereinafter: the “ICAS”) on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (hereinafter: the “PIL Act”). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the ad hoc Division and of its panels of arbitrators, pursuant to Article 7 of the CAS Ad Hoc Rules.

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

### B. Merits

7.3 This Panel is faced with evaluating an unprecedented response to an extraordinary situation, that is, a state-sponsored doping scheme.

#### 1) *Was the IOC established process a sanction?*

7.4 The process established by the IOC to establish an invitation list of Russian athletes and support staff as OAR cannot, in the Panel’s view, be described as a sanction, as argued by the Applicants; rather, it is more properly characterized as an eligibility decision. In establishing a process that provided individual athletes and support staff with the opportunity to be invited to participate, the IOC did not deprive the Applicants of any “right” they may have had to participate.

7.5 The Panel finds that the process was designed to protect the rights of individual Russian athletes and support staff, who were not been implicated in the state-sponsored doping scheme, by an expert panel rather than the “*sanction*” of any particular athlete and support staff “*without proof*” as asserted by the Applicants. The Panel concludes that the process was a considered and measured response to the confirmed state-sponsored doping scheme.

7.6 The starting point for an analysis of the application is Article 44 par. 3 of the Olympic Charter:

*“Any entry is subject to acceptance by the IOC, which may, at its discretion, refuse any entry, without indication of grounds. Nobody is entitled as of right to participate in the Olympic Games”.*

- 7.7 Once the IOC suspended the ROC, the ROC no longer had any right to enter athletes and support staff into the Olympic Games. As a result, no Russian athletes could, in normal circumstances, be entered into the Games. The ability of the IOC to suspend the ROC was not challenged. The Panel notes that the Swiss Federal Tribunal dismissed the Russian Paralympic Committee appeal from CAS decision CAS 2016/A/4745 which had dismissed the Russian Paralympic Committee’s appeal against its suspension by the International Paralympic Committee for the 2016 Summer Paralympic Games in Rio de Janeiro (4A\_470.2016).
- 7.8 The IOC nevertheless chose to offer individual athletes, who the Panel notes were part of the impugned Russian sport system, the opportunity to participate in the Games under prescribed conditions - a process that was designed to balance the IOC’s interest in the global fight against doping and the interests of individual athletes from Russia.
- 7.9 The process by which the IOC determined which athletes would be offered that opportunity was left to the discretion of the IRP and the OAR IG within the parameters established by the IOC.
- 7.10 In CAS 2016/O/4684, the CAS Panel found that an IAAF rule enabling an athlete to apply for permission to compete as a neutral athlete if they could clearly and convincingly demonstrate that they were not tainted by the Russian system was a permissive rule. The panel concluded that a rule allowing eligibility to be regained if specific conditions were satisfied could not be construed as a sanction.
- 7.11 During final submissions, counsel for the Applicants acknowledged that the IOC had the ability to institute the process it did.

**2) *Was the IOC established process discriminatory, arbitrary or otherwise unfair?***

- 7.12 Mr. Gunter Younger, Head of the WADA Intelligence & Investigations Department and a member of the IRP, testified about how the IRP established the criteria it applied in developing the invitation list and the methodology used.
- 7.13 Ms. Hoevertsz testified that the Panel reviewed the information relied on by the IRP and endorsed both the methodology and the list. Further she testified that on 4 February 2018, the OAR IG met to review an additional list, which included the Applicants. She confirmed although the OAR IG was aware of the CAS decisions of 1 February 2018, nevertheless determined to apply the same criteria and methodology. The OAR IG declined to issue further invitations.
- 7.14 The Panel accepts the evidence of the witnesses, whom it found to be credible and reliable, that they acted independently in their roles and that they developed and applied criteria that were rationally connected to their mandates; that is, to enable individual Russian athletes and support

staff they considered to be “clean”, or there were suspicions they were implicated in, or protected by, the Russian doping scheme, the opportunity to compete.

- 7.15 The Panel accepts that the members of the IRP and OAR IG approached their mandate in good faith and applied the criteria to each of the 500 athletes identified by the ROC (suspended) in a consistent manner. The Panel further finds that the assessments were made anonymously to avoid any possible discrimination or bias. The Panel notes that the IRP and OAR IG were required to evaluate a large number of athletes in a very short period of time and that the process may not have been a perfect one due to time constraints. However, the Panel finds that, in the circumstances, the assessments were made, as far as possible in the circumstances, in an appropriate and fair manner.
- 7.16 There is no evidence before this Panel that the IRP and the OAR IG acted in an arbitrary, unfair or unreasonable manner.
- 7.17 The Panel notes that almost 80% of the athletes put forward for invitation by the ROC were accepted by the IRP and OAR IG. That the individual Applicants failed to meet the criteria suggests that there was some evidence that there were suspicions they were implicated in, or protected by, the Russian doping scheme notwithstanding the CAS decisions of 1 February 2018.
- 7.18 It may be that non-sanctioned individual athletes, including the Applicants, are prevented from participating in the Olympic Games simply because they are citizens of a country that has been found to have engaged in a systemic manipulation of the anti-doping rules. However, in light of the IOC’s overall objective to balance the interests of clean athletes and the fight against doping against the interests of individual Russian athletes, the Panel concludes that any unfairness was a consequential effect of the suspension of the ROC and that the process was neither discriminatory nor unfair (see also CAS 2015/A/4319).
- 7.19 The Panel appreciates the distress and disappointment expressed by the Applicants present at the hearing about their loss of opportunity to participate at the OWG 2018, particularly because they believe the CAS decisions issued 1 February 2018 proved that they were not “cheaters”. As this Panel has noted, we are only deciding whether the process implemented by the IOC, in circumstances where the ROC was suspended and has failed to rebut the evidence of systemic manipulation of the anti-doping rules and system in Russia, was permissible and provided a fair opportunity for some athletes to be offered an opportunity to participate at the Games. The Panel has determined that the process, while it may have been imperfect due to time constraints, was appropriate, independent and fairly carried out.

## **8 CONCLUSION**

- 8.1 In view of the above considerations, the Panel concludes that the Applicants have not demonstrated that the process established by the IOC constituted a sanction, or that the manner in which the IRP or the OAR IG independently evaluated the Applicants was carried out in a

discriminatory, arbitrary or unfair manner. The Panel also concludes that there is no evidence the IRP or the OAR IG improperly exercised their discretion.

- 8.2 Having arrived at this conclusion, the Panel finds that it is unnecessary to address the remaining arguments advanced by the Applicants.
- 8.3 The Panel dismisses the Application.

## DECISION

**The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:**

The Application filed by Alexander Legkov, Maxim Vylegzhanin, Evgeniy Belov, Alexander Bessmertnykh, Evgenia Shapovalova, Natalia Matveeva, Aleksandr Tretiakov, Elena Nikitina, Maria Orlova, Olga Fatkulina, Alexander Rummyantsev, Artem Kuznetsov, Tatyana Ivanova, Albert Demchenko, Sergei Chudinov on 7 February 2018 is dismissed.