



Arbitration CAS anti-doping Division (OG Rio) AD 16/009 & 013 International Olympic Committee (IOC) v. Qian Chen, award of 6 April 2017

Panel: Mr Efraim Barak (Israel), Sole arbitrator

Modern Pentathlon

Doping (hydrochlorothiazide)

Automatic disqualification based on Art. 9 IOC ADR

Proportionality of the disqualification

1. Art. 9 of the IOC Anti-Doping Rules (ADR) clearly states that an anti-doping rule violation in connection with an in-competition test automatically leads to disqualification of the result obtained in the competition in question. No flexibility is provided at all. The automatic disqualification pursuant to this article is nothing but the objective consequence of an objective fact, i.e. the adverse analytical finding. It is an application of a condition of ineligibility retroactively assessed. The aforementioned condition implies that the athlete cannot validly and legitimately compete in a competition of an individual sport during the Olympic Games if a prohibited substance is present in his or her body irrespective of whether the source of that presence can in anyway be linked to a fault or negligence of the athlete and/or irrespective of any effect that substance may have had on his or her performance or not.
2. Within the framework of Art. 9 IOC ADR, and as part of the anti-doping system and the need of the fight against doping in sports, the issue of proportionality has already been taken into account. Indeed, within this system the possibility exists that an athlete who bears no fault or negligence, nor she or he had a known intention to enhance the sportive performance will be automatically disqualified for an established anti-doping rule violation in connection with an in-competition test. However, it is not a question of culpability, but a consequence of circumstances in which an athlete did not meet the equal standards applicable to all the participants in the competition. The mere participation of the athlete in a competition while a prohibited substance was present in his or her body by itself establishes a situation of non-equality between him or her and the other participants in the competition, regardless of the question of culpability or intention.

I. FACTS

1. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the other chapters of the present award.
2. Ms. Qian Chen (the “Athlete”) is a representative of the Chinese National Olympic Committee (“NOC”). Her sport is Modern Pentathlon. The Athlete competed in the 2016 Rio Olympic Games (the “Games”) in the Modern Pentathlon Women’s event (which is one event) on 18 and 19 August 2016, in which she finished in 4th place.
3. On 17 August 2016, one day prior to the start of event, the Athlete underwent an out-of-competition doping test (sample code 6222269) (the “First Doping Test”).
4. On 19 August 2016, immediately after having finished her competition, the Athlete underwent another doping test, this time an in-competition test (sample code 6222536) (the “Second Doping Test”).
5. On both doping control forms, the Athlete declared the use of Lidocaine and Betamethasone. The Athlete submits that both medications were administered to her on 29 July 2016 at a sports medicine hospital in Beijing. The injection of these products was conducted according to the IOC Needle Injection Policy.
6. The results of the analysis of the A-Sample of the First Doping Test revealed the presence of Hydrochlorothiazide (HCTZ), a diuretic or masking agent, prohibited under S5 of the WADA Prohibited List.
7. HCTZ is a specified substance listed in the WADA Prohibited List under section S5.
8. By letter dated 20 August 2016, the Athlete was informed of an adverse analytical finding (“AAF”) in her A-sample as a result of the First Doping Test.
9. The Athlete requested the opening of her B Sample.
10. The analysis of the B Sample took place on 21 August 2016 and confirmed the results of the A Sample.
11. On 21 August 2016, the IOC filed an application with the CAS ADD seeking *inter alia* that the Athlete be found guilty of an anti-doping rule violation (“ADRV”) in accordance with Article 2.2 IOC ADR, with all the resulting consequences. This application was registered under reference CAS AD 16/09 (the “First Application”). Although the analysis of the B Sample took place on the very same day, the First Application was submitted based on the result of the analysis of the A Sample only.
12. In the First Application, the IOC sought the following requests for relief:
 1. *The Application of the International Olympic Committee is admissible.*

2. *The Athlete be found guilty of an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016 [the “IOC ADR”].*
 3. *All results obtained by the Athlete in the Olympic Games Rio 2016 [“Rio 2016”] be disqualified with all Consequences, including forfeiture of all medals, points and prizes (Women’s Modern Pentathlon).*
 4. *The Athlete be excluded from the Olympic Games Rio 2016.*
 5. *The Athlete’s accreditation (number 1133213) be withdrawn.*
 6. *The matter of the Athlete be referred to UIPM to impose Consequences that extend beyond the Olympic Games Rio 2016 upon the Athlete.*
13. On 25 August 2016, the IOC filed the documentation packages for the Athlete’s A and B samples for the First Doping Test. On 2 September 2016, in accordance with Articles 12 and 11 of the Arbitration Rules applicable to the CAS ADD, Mr. Efraim Barak was appointed as Sole Arbitrator.
14. On 22 September 2016, the Sole Arbitrator ordered the Parties to file written submissions in support of their position on the merits for the First Application no later than 30 September 2016.
15. On 26 September the Athlete asked for an extension of 60 days to submit her answer based on various grounds as follows:
- “I ... must hire a lawyer, find evidence from Rio Olympics, to find out where, how to get important evidence and witnesses. Also, I need time translate all evidence and statements from Chinese to English, find laboratories qualified to test samples. Also, China has national holiday from October 1th through October 7th and that week witnesses are hard to locate, laboratories and translation companies closed”.*
16. On same day, the IOC informed the Sole Arbitrator that *“the IOC is opposed to an extension of 60 days but would not oppose a reasonable extension of the deadline”.*
17. On 28 September 2016 – one month after the test itself – the IOC was informed that the Athlete’s A Sample for the Second Doping Test also revealed the presence of HCTZ. The results of the Second Doping Test were then immediately communicated to the Athlete the next day, 29 September 2016. She then requested that her B Sample be analysed as well.
18. On 30 September 2016, the IOC filed a second application with the CAS ADD with respect to the Second Doping Test seeking *inter alia* that the Athlete be found guilty of an anti-doping rule violation in accordance with Article 2.1 and/or 2.2 of the IOC ADR, with all the resulting consequences. This application was registered under reference CAS AD 16/13 (the “Second Application”).
19. In the Second Application, the IOC sought the following request for relief:
1. *Preliminary: The proceedings concerning the present Application and the proceedings CAS AD 19/09 are consolidated.*
 2. *Principally: The application of the International Olympic Committee is admissible.*

3. *The Athlete be found guilty of an anti-doping rule violation in accordance with Article 2.1 and/ or Article 2.2 of the IOC ADR.*
 4. *The results obtained by the Athlete in the Olympic Games Rio 2016 be disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes (namely the fourth place obtained in the Women's Modern Pentathlon event).*
 5. *The matter of the Athlete be referred to the UIMP to impose Consequences that extend beyond the Olympic Games Rio 2016 upon the Athlete.*
 6. *The Chinese Olympic Committee is requested to ensure full implementation of the decision.*
20. On 4 October 2016, in consideration of the Second Application, the First and Second Applications were suspended pending a decision on the consolidation of both procedures.
 21. On 23 October 2016, Mr. Efraim Barak was also appointed as Arbitrator in the CAS AD 16/13 proceedings.
 22. On 24 October 2016, the parties were informed that the President of the CAS ADD decided to consolidate the First and Second Applications.
 23. On 28 October 2016, the IOC informed the Athlete that the result of the analysis of her B Sample from the Second Doping Test confirmed the results of the A Sample.
 24. On 1 November 2016, the IOC filed the documentation packages for the Athlete's A and B samples for the Second Doping Test, following which the Athlete was invited to file her written answer.
 25. On 1 December 2016, the Athlete filed her answer to both the First and Second Applications.
 26. On 16 January 2017, the IOC filed its response to the Athlete's answer. In its response, the IOC stated, *inter alia*, that:

"The fact that two samples were found positive technically means that two violations have been established. If the application of sanctions pursuant to Art. 10 of the IOC ADR were at stake, this would imply that, in application of Art. 10.7 (multiple Violations) and more specifically Art. 10.7.4.1, both violations would have been considered as one for the purpose of Art. 10.7 (i.e. no application of an increase sanction for the multiple violation)".
 27. The other interested parties, the Chinese Olympic Committee, the World Anti-Doping Agency (WADA) and Union Internationale de Pentathlon Moderne (UIMP) did not file answers.
 28. On 8 February 2017, following the completion of the submissions by the parties and various procedural matters, a hearing on the merits of the case took place at the CAS Court Office in Lausanne, Switzerland. The Sole Arbitrator was assisted by Mr. Brent J. Nowicki, Managing Counsel, and was joined by the following:

For the IOC:

- Mr. Jean-Pierre Morand
- Mr. Nicolas Zbinden
- Ms. Viola Maerz
- Dr. Martial Saugy (scientific expert on the behalf of IOC)

For the Athlete:

- Ms. Qian Chen (by videoconference)
 - Mr. Christian Keidel
 - Dr. Laurent Rivier (scientific expert on behalf of the Athlete)
 - Translation Chinese – English/English – Chinese was provided by the translator, Mr. Xiaoxin Bai for the Athlete. The translator was helped by Ms. Qian Zheng and Mr. Pin Gao (translations assistants).
29. The other interested parties, the Chinese Olympic Committee, the World Anti-Doping Agency (WADA) and Union Internationale de Pentathlon Moderne (UIMP) did not attend the hearing.
30. At the hearing, the parties raised no objection as to the appointment of the Sole Arbitrator or the procedure, and at the conclusion of the hearing, both parties confirmed their satisfaction in respect to the right to be heard and that it had been fully respected.

II. PROCEDURAL PRELIMINARY ASPECTS

31. Application 16/09 deals with an Out-of-Competition test leading to an AAF, while Application 16/13 deals with an In-Competition test leading to an AAF.
32. At the outset of the hearing, considering the written submissions of the parties that referred to the scope of the examination of the facts and the circumstances related to the ADRV when the presence of the prohibited substance is not disputed, and considering the fact that both Applications were consolidated, the Sole Arbitrator asked the parties to express their views and comments in respect of the differences in the possible consequences between the ADRVs established as a result of In-Competition and Out-of-Competition tests under the terms of the applicable articles of the IOC ADR for the Games.
33. In this respect, the Sole Arbitrator referred the parties to the fact that Art. 9 IOC ADR deals with the consequences of an AAF found in case of an In-Competition test in Individual Sports, leading “*automatically*” to the “*Disqualification of the result obtained in the Competition in question...and any other subsequent Competitions in the same Event for which the Athlete only qualified as a result of his participation in the Competition in question*”, regardless of the question of fault or negligence of the

Athlete, and thus may lead to a very narrow and limited examination of the circumstances and the facts related to the established violation for the purpose of the sanction. This is even more so when the presence of prohibited substance is not disputed. Art. 10, on the other hand, handles in this case the consequences of the Out-of-Competition test following the finding of an ADRV, referring the Sole Arbitrator to various factors to be taken into account in considering “*whether to disqualify other results in the Olympic Games Rio 2016*”.

34. Therefore, in this case, even if an ADRV as a result of the In-Competition test is established in respect of this test, and even if in respect of this test there is no need to deal with the questions of fault or negligence (as submitted by the IOC), still this question of responsibility will remain relevant and will have to be dealt in respect of the Out-of-Competition test. Furthermore, Art. 10 IOC ADR deals with the consequences of the ADRV for an Out-of-Competition test or an In-Competition test in respect of “*the Athlete individual results in the other Competitions other than the Competition in which the anti-doping rule violation occurred*”. However, in this case there was no such “other” Competition.
35. Finally, the Sole Arbitrator notes that in any case, under Article 7.1.2 IOC ADR, the responsibility for results management in terms of sanctions beyond the Games, shall be referred to the applicable International Federation (i.e. the UIMP).
36. Considering all the above, the IOC requested to withdraw application No. 09/16 subject to the amendment of Application 13/16 by adding the prayers for relief numbers 1 and 2 of Application 09/13 (as well as the facts allegedly supporting the request for this reliefs that were in any case included also in the factual part of Application 13/16) as part of the prayers for relief of application 16/13.
37. After explaining the application to the Athlete, Counsel for the Athlete stated that mainly due to the fact that the Athlete in any case does not dispute the existence of the prohibited substance in her body, the Athlete would agree to the request while maintaining all the arguments submitted in the written answer.
38. Considering the agreement between the parties and the fact that in application 16/13 the facts related to the Out-of-Competition test was mentioned as part of the facts (article 2), the Sole Arbitrator grants the IOC’s request and therefore, application 16/09 is deemed withdrawn.
39. The award therefore is issued only in respect of Application 16/13, as amended.

III. LEGAL ASPECTS

A) Jurisdiction

40. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS ADD its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games (Art. 8.2.2 IOC ADR).
41. Pursuant to Art. 8.1.1 of the IOC ADR:

“Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules”.

Pursuant to Art. 1 of the Arbitration Rules applicable to the CAS ADD:

“The CAS ADD shall be the first instance authority for doping-related matters, responsible for the conduct of the proceedings and the issuance of decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR”.

42. The parties do not contest the jurisdiction of the CAS ADD to decide the dispute.

43. It follows that the CAS ADD has jurisdiction over the Application.

B) Applicable Law

44. Article 17 CAS ADD Rules reads as follows:

“The Panel shall rule on the dispute pursuant to the IOC ADR, the applicable regulations, Swiss Law and general principles of law”.

45. The Introduction to the IOC ADR refers *inter alia* to the scope of the Rules and stipulates the following:

“These Rules apply in connection with the Olympic Games Rio 2016. They shall, without limitation, apply to all Doping Controls over which the IOC has jurisdiction in connection with the Olympic Games Rio 2016.

These Rules shall, without limitation, apply automatically to (a) the IOC; (b) Athletes entered in the Olympic Games Rio 2016 ...

(...)

Athletes entered in the Olympic Games Rio 2016 or who have otherwise been made subject to the authority of IOC in connection with the Olympic Games Rio 2016 are bound by these Rules as condition of eligibility to participate in the Olympic Games Rio 2016...”.

46. The Sole Arbitrator hereby confirms that he will apply primarily the IOC ADR, which under Art. 17.4 IOC ADR include as an integral part the World Anti-Doping Code and the International Standards that shall prevail in case of conflict between them and the IOC ADR. Furthermore, Art. 17.2 IOC ADR refers to Swiss Law and the Olympic Charter as the applicable law governing the IOC ADR and thus will apply, if needed, on a subsidiary basis.

47. The Sole Arbitrator further confirms that these proceedings are governed by the CAS ADD Rules. Pursuant to Art. 7 of the CAS ADD Rules, these proceedings are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (“PIL Act”). The PIL Act also applies to this arbitration as a result of the express choice of law contained in

Article 17 of the CAS ADD Rules and as a result of the choice of Lausanne, Switzerland as the seat of the CAS ADD and the Sole Arbitrator, pursuant to Article 7 of the CAS ADD Rules.

C) Legal Framework

48. Within the context of this proceedings, the only questions to be determined are: (a) whether an ADRV is established, and if so; (b) what are the applicable consequences considering the fact that the ADRV occurred within the framework of the Games.
49. Therefore, considering the scope of the present arbitration, the most relevant articles of the Applicable Law for the discussion on the merits of this Application are the following:
50. Art. 2 IOC ADR reads as follows:

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.

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

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 *It is each Athlete's 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 A 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 Prohibited Substances that can also be produced endogenously.*

2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

51. Art. 3.1 IOC ADR reads as follows:

3.1 Burdens and Standards of Proof

The IOC shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC 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 these Rules place 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, the standard of proof shall be by a balance of probability.

52. Art. 9 IOC ADR reads as follows:

Automatic Disqualification of Individual Results

An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in the Competition in question (and any other subsequent Competitions in the same Event for which the Athlete only qualified as a result of his participation in the Competition in question) with all resulting Consequences, including forfeiture of any medals, points and prizes.

53. Art. 10.2 IOC ADR reads as follows:

[S]hould an Athlete or other Person be found to have committed an anti-doping rule violation, the CAS Anti-Doping Division may declare the Athlete or other Person ineligible for such Competitions at the Olympic Games Rio 2016 in which he/she has not yet participated, along with other sanctions and measures which may follow, such as exclusion of the Athlete and other Persons concerned from the Olympic Games Rio 2016 and the loss of accreditation.

IV. MERITS

A) The Presence of the prohibited substance in the Athlete's body

54. In her submissions and during the hearing, the Athlete did not dispute the results of the analysis of her samples, thus admitting the presence of the prohibited substance in her body.
55. The presence of the prohibited substance in the Athlete's body was established based on the Analysis of the A Samples as confirmed by the Analysis of the B Samples that took place at the request of the Athlete.
56. The Sole Arbitrator, therefore, finds as a matter of fact that in the occasion of the Games, the presence of the prohibited substance in the body of the Athlete at the time of both anti-doping tests – Out-of-Competition (on August 17 2016) and In-Competition (on August 19 2016) – was established.

B) The Submissions of the Parties

57. Although the Athlete does not deny the presence of the Prohibited Substance in her body as a result of an In-Competition doping test, the Athlete denies her responsibility for the consequences of the presence of the prohibited substance by asking the Sole Arbitrator to deny the IOC's request to disqualify the result of the Athlete at the Games.
58. In support of her request, the Athlete brought forward the argument that a comparison of Art. 9 IOC ADR and CAS jurisprudence shows that it will would be completely disproportionate to apply Art. 9 IOC ADR to following arguments:
 - a. HCTZ does not increase sporting performance;
 - b. The intake and concentration of HCTZ found in the Athlete's samples was so low that it could not have possibly masked the intake of any performance-enhancing substance; and
 - c. The Athlete is the victim of an HCTZ-contaminated nutritional supplement, i.e. she does not bear any fault or negligence.
59. In support of these assertions, the Athlete submitted various evidence including the result of positive findings of HCTZ found by two Chinese labs in fruit sugar tablets that she had used since 2015, including during the Games, at the advice and recommendation of Mr. Al Lei "*a medical advisor at Jiangsu Research Institute of Science which is connected to Jiangsu Province Sports Bureau*". The Athlete also provided an expert opinion of Dr. Laurent Rivier, an expert in forensic toxicology. According to his opinion, the concentration of HCTZ found in the Athlete's body could be consistent with her alleged intake of fruit sugar tablets. Dr. Rivier also stated that the concentration of HCTZ that was found in the Athlete's samples could not have a masking effect and thus could not mask any use of any other prohibited substance for the enhancement of her sporting performance.

60. Answering the arguments of the Athlete, the IOC insists that Art. 9 IOC ADR is the clear expression of the regime of strict liability and as such does not provide any flexibility at all. Disqualification is an automatic consequence of an ADRV. The IOC reiterates that Art. 2.1.2 IOC ADR provides no room for the consideration of intent, fault or negligence.
61. The IOC further argues that disqualification is *“the objective consequence of an objective fact: the established presence of a prohibited substance in the Athlete’s body”*. As such and in effect *“the automatic disqualification is nothing else than a condition of eligibility retroactively assessed”*. In support of this argument, the IOC refers to the difference between Art. 9 and Art. 10 IOC ADR and the fact that Art. 10 which is in nature a clear article dealing with sanctions is indeed not based on strict liability and thus provide for a range of flexibility in considering and imposing the sanction.
62. The IOC submits that despite the fact that there is no question that the system of presumption and automatic disqualification in the specific case of an established ADRV following an In-Competition test is effectively harsh on Athletes, the system as such is necessary and accepted as it is. The consequences of its application cannot and will not therefore be considered as an invalid application of the proportionality principle of Art. 27 of the Swiss Civil Code.
63. In response to the Athlete’s explanations as to the possible circumstances that led to the AAF and in spite of these explanations being irrelevant in the opinion of the IOC, the IOC highlights that the tablets which were the alleged source of the prohibited substance were not reported on the Doping Control Forms - unlike the Athlete’s other products. Furthermore, the IOC raises doubts in respect of the conditions in which the tablets were checked by the Chinese Labs and the qualification of labs. Although the IOC does not exclude the possibility and the right of the Athlete to try and convince the Sole Arbitrator otherwise, such line of argumentation of the Athlete is irrelevant in this case.
64. Finally, the IOC provided an expert opinion of Dr. Martial Saugy, the Director of The Center for Research and Expertise in Anti-Doping Sciences (REDS) in the University of Lausanne, stating that the reports issued by the Chinese labs are *“far from the standard of a WADA-accredited Laboratory”* however assuming that the reports are reliable and commenting on the conclusion of Dr. Rivier, Dr. Saugy found a mistake in the calculations that the IOC considered *“a major mistake”* as *“Dr. Rivier would have applied as assumed level of contamination which appears to be the higher by a factor of 1000 than the one shown in the analysis on which the scenario is based”*.
65. The correct calculations (which Dr. Rivier was very open to admit his mistake during the hearing) show that *“even taking the best scenario for the Athlete (a dose of two time four tablets a day) none of the levels of the HCTZ could have given rise to the concentration found in the Athlete’s urine”*. It follows, in the opinion of the IOC that even assuming that the Athlete’s explanations were relevant to the case at hand, they are not supported by the evidence produced by the Athlete.

C) The allegedly contaminated fruit sugar tablets as the possible source of the AAF and its relevancy in this case

66. During the hearing, the Athlete's submissions and evidences in respect of the possible source of the AAF were heard and examined. However, all those issues are totally irrelevant for the case at stake in which the Athlete is confronted with an AAF in connection with an In-Competition anti-doping test and the consequence of such finding pursuant to Art. 9 IOC ADR.
67. Indeed, within the framework of this proceeding, as amended when the IOC withdrew Application 09/16 and amended Application 13/16, the Sole Arbitrator is still requested to decide that *"The Athlete be found guilty of an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016"* in respect of the out of competition test as well. However, no specific sanctions are requested in respect of this violation – if indeed found – and in such case the consequences of such a violation are to be dealt with in accordance with prayer for relief that asks *"The matter of the Athlete be referred to the UIMP to impose Consequences that extend beyond the Olympic Games Rio 2016 upon the Athlete"*.
68. Therefore, the Sole Arbitrator finds that the submissions of the Athlete in respect of the possible source and the possible explanation for the existence of the prohibited substance in her body are irrelevant to the case at hand, however will be examined thoroughly and dealt with by her International Federation in the process of the result management in terms of sanctions beyond the Games.

D) The anti-doping rule violation

69. Under Art. 2.1.1 and 2.1.2 IOC ADR (quoted above), the finding of the prohibited substance in the Athlete body is *"Sufficient proof (for the establishment) of an anti-doping violation under Art. 2.1"*.
70. Under Art. 2.1.1 IOC ADR *"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"*.
71. A strict and simple application of the anti-doping rules should thus lead to the conclusion that an ADRV was committed and the Athlete should be found responsible for the violation based on Art. 2.1.1. since *"[i]t is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is used"*.
72. Considering the fact that the presence of the prohibited substance was found in the Athlete's body in an In-Competition test, Art. 9 IOC ADR clearly states that *"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in the Competition in question (and any other subsequent Competitions in the same Event for which the Athlete only qualified as a result of his participation in the Competition in question) with all resulting Consequences ..."*.

73. Nevertheless, and in spite of the clear wording of the Art. 9 IOC ADR, the Athlete asks the Sole Arbitrator to deny the request of the IOC based on arguments that deal with questions of intent, fault or negligence on the Athlete's part.
74. The Sole Arbitrator is not convinced by the Athlete's arguments and submissions.
75. The Sole Arbitrator found, as a matter of fact, that in the occasion of the Games, the presence of the prohibited substance in the body of the Athlete at the time of both anti-doping test, Out-of-Competition (on August 17 2016) and In-Competition (on August 19 2016) was established.
76. The findings in both results establish an ADRV - one of which was established following an In-Competition test. Such scenario is dealt with by Art. 9 IOC ADR.
77. According to Art. 9 IOC ADR, no flexibility is provided at all. Disqualification is an automatic consequence of an ADRV.
78. The Sole Arbitrator concurs with the IOC's submission in respect of Art. 9 IOC ADR. Indeed, the automatic disqualification pursuant to this article is nothing but the objective consequence of an objective fact – i.e. the AAF.
79. The Sole Arbitrator is also of the opinion that indeed as submitted by the IOC, the automatic disqualification of the Athlete when the ADRV was established in Individual Sport in connection with an In-Competition test is an application of a condition of ineligibility retroactively assessed. The aforementioned condition implies that the Athlete cannot validly and legitimately compete in a competition of an Individual Sport during the Games if a Prohibited Substance is present in his or her body irrespective of whether the source of that presence can in anyway be linked to a fault or negligence of the Athlete and/or irrespective of any effect that substance may have had on his or her performance or not.
80. Since an ADRV is established, the application of Art. 9 IOC ADR leads to the inescapable conclusion that the Athlete's result must be disqualified.
81. This conclusion follows and is supported by ample jurisprudence of CAS in this respect, including the awards referred to by the IOC in its submissions (CAS 2013/A/3370 (in para 184) and CAS 2014/A/3475).
82. The Sole Arbitrator does not agree with the Athlete that the automatic disqualification pursuant to Art. 9 ADR IOC is disproportionate. The Sole Arbitrator noted that the only CAS case the Athlete referred to in her attempt to find support to this allegation was CAS 2006/A/1025. However, the conclusions of the Panel in that case are not applicable here. In CAS 2006/A/1025, the Panel explained that it was confronted with a situation in which the Panel found that a lacuna existed in the WADC in relation to the circumstances of that case. In light of this situation, the Panel indeed mentioned that *"the WADC provides a just and proportionate in all but very rare case"*.

83. The Sole Arbitrator fully adhered to this conclusion and notes that the automatic disqualification already existed under the same WADC in which a lacuna was found in respect of specific circumstances of CAS 2006/A/1025.
84. In the case at hand, there is no lacuna and there is no gap that the Sole Arbitrator is called to fill with a proportionate sanction. The circumstances of this procedure are fully covered by Art. 9 IOC ADR which clearly lead to an automatic disqualification being part of the same system that was indeed found to be just and proportionate by the Panel in CAS 2006/A/1025 as well as all the other CAS Panels that applied the automatic disqualification in other cases.
85. The Sole Arbitrator is of the opinion that within the framework of Art. 9 IOC ADR, and as part of the anti-doping system and the need of the fight against doping in sports, the issue of proportionality has already been taken into account. Indeed, within this system the possibility exists that an athlete who bears no fault or negligence, nor she or he had a known intention to enhance the sportive performance will be automatically disqualified for an established anti-doping rule violation in connection with an In-Competition test. However, it is not a question of culpability, but a consequence of circumstances in which an athlete did not meet the equal standards applicable to all the participants in the competition. The mere participation of the athlete in a competition while a prohibited substance was present in his or her body by itself establishes a situation of non-equality between him or her and the other participants in the competition, regardless of the question of culpability or intention.
86. In this specific case, the Sole Arbitrator was exposed to the details of the career of the Athlete. Indeed the findings of these proceedings are difficult for the Athlete who had a clean record and remarkable achievements along her career. The findings in this case, however, should not be considered as a stain on her whole career. It only means that on a certain date, perhaps during a determined competition, the Athlete simply did not comply with the rules set out for all the participants by having a prohibited substance in her body. This objective fact leads to the inevitable result of this Application. As noted above, the subjective elements related to intent and culpability raised on her defence as submitted by the Athlete are still relevant and will be examined by her International Federation in a later proceeding.

V. CONCLUSION

On the basis of the facts and legal arguments set forth above, the applications are determined as follows:

1. The application CAS AD 16/09 is deemed withdrawn.
2. The application CAS AD 16/13 is granted.
3. The Athlete is found to have committed an anti-doping rule violation pursuant to Article 2.1 of the IOC ADR.

4. The results obtained by the Athlete in the Women's Modern Pentathlon event at the Olympic Games Rio 2016, in which she finished 4th, are disqualified with all consequences, including forfeiture of her Olympic diploma.
5. The Athlete is ordered to return her diploma.
6. The Union Internationale de Pentathlon Moderne is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.