Tribunal Arbitral du Sport
Court of Arbitration for Sport

COURT OF ARBITRATION FOR SPORT (CAS)
Ad hoc Division – Games of the XXXI Olympiad in Rio de Janeiro

CAS OG 16/21 ELENA ANYUSHINA & ALEXEY KOROVASHKOV V. ICF & RCF

AWARD

in the arbitration between

1/ Elena Anyushina
2/ Alexey Korovashkov

("Applicants")

and

1/ International Canoe Federation (ICF)
2/ Russian Canoe Federation (RCF)

("Respondents")

and

1/ International Olympic Committee (IOC)
2/ Russian Olympic Committee (ROC)
3/ World Anti-Doping Agency (WADA)
4/ Richard McLaren
5/ Austrian Olympic Committee

("Interested Parties")

1 PARTIES

1.1 The First Applicant is Ms. Elena Anyushina ("Ms. Anyushina"), a canoeist from Russia.

1.2 The Second Applicant is Mr. Alexey Korovashkov ("Mr. Korovashkov"), a canoeist from Russia.

1.3 The First Respondent is the International Canoe Federation ("ICF"), based in Lausanne, Switzerland, the organisation responsible for the sport of canoe worldwide.

1.4 The Second Respondent is the Russian Canoe Federation ("RCF"), based in Moscow, Russia, the organisation responsible for the sport of canoe in Russia.

1.5 The First Interested Party is the International Olympic Committee ("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.

1.6 The Second Interested Party is the Russian Olympic Committee ("the ROC") based in Moscow, Russia, the National Olympic Committee for Russia.

1.7 The Third Interested Party is the World Anti-doping Agency ("WADA"), the organisation responsible for promoting, coordinating and monitoring the fight against doping, having its headquarters in Montréal, Canada.

1.8 The Fourth Interested Party is Professor Richard H. McLaren.

1.9 The Fifth Interested Party is the Austrian Olympic Committee (the "AOC") based in Vienna, Austria, the National Olympic Committee of Austria.

2 FACTS

2.1 Set out below is a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the submissions of the parties. Additional facts may be set out, where relevant, in the legal considerations of the present award.

2.2 On 18 July 2016, WADA published on its website the report commissioned by WADA from Professor Richard McLaren as the Independent Person ("the IP Report"). The IP Report described a scheme in which the Moscow Laboratory operated, for the protection of doped Russian athletes and within a State-dictated failsafe system, what was described in the IP Report as a Disappearing Positive Methodology, so as to protect Russian athletes from Anti-Doping Rule Violations

(ADRVs), including with respect to disqualification during the Sochi Winter Games.

2.3 On 24 July 2016, the IOC Executive Board issued a decision (the "IOC Decision") concerning the participation of Russian athletes in the Rio Games. According to this decision, after referring to the IP Report, the following was stated:

"Under these exceptional circumstances, Russian athletes in any of the 28 Olympic summer sports have to assume the consequences of what amounts to a collective responsibility in order to protect the credibility of the Olympic competitions and the "presumption of innocence" cannot be applied to them. On the other hand, according to the rules of natural justice, individual justice, to which every human being is entitled, has to be applied. This means that each affected athlete must be given the opportunity to rebut the applicability of collective responsibility in his or her individual case.

1. *The IOC will not accept entry of any Russian athlete in the Olympic Games Rio 2016 unless such athlete can meet the conditions set out below.*

2. *Entry will be accepted by the IOC only if an athlete is able to provide evidence to the full satisfaction of his or her International Federation (IF) in relation to the following criteria:*

   - *The IFs, when establishing their pool of eligible Russian Athletes, to apply the World Anti-Doping Code and other principles agreed by the Olympic Summit (21 June 2016).*

   - *The absence of a positive national anti-doping test cannot be considered sufficient by the IFs.*

   - *The IFs should carry out an individual analysis of each athlete's anti-doping record, taking into account only reliable adequate international tests, and the specificities of the athlete's sport and its rules, in order to ensure a level playing field.*

   - *The IFs to examine the information contained in the IP Report, and for such purpose seek from WADA the names of athletes and National Federations (NF's) implicated. Nobody implicated, be it an athlete, an official, or an NF, may be accepted for entry or accreditation for the Olympic Games.*

   - *The IFs will also have to apply their respective rules in relation to the sanctioning of entire NFs.*

3. *The ROC is not allowed to enter any athlete for the Olympic Games Rio 2016 who has ever been sanctioned for doping, even if he or she has served the sanction.*

4. *The IOC will accept an entry by the ROC only if the athlete's IF is satisfied that the evidence provided meets conditions 2 and 3 above and if it is upheld by an expert from the CAS list of arbitrators appointed by an ICAS Member, independent from any sports organisation involved in the Olympic Games Rio 2016."*

2.4 On 26 July 2016, in response to the IOC Executive Board's decision, the ICF imposed an immediate suspension on five Russian Canoe Sprint athletes, including the Applicants, and removed them from the Games of the XXXI Olympiad in Rio de Janeiro (the Challenged Decision). As explained by the Applicants, the ICF determined that those athletes "*were no longer be eligible to take to the start line, or to compete in the OG 2016 since they had been implicated*" in the IP Report (emphasis added).

2.5 The Russian quotas were reallocated by the ICF.

2.6 On 27 July 2016, the Russian Canoe Federation requested Professor McLaren, WADA and RUSADA to provide specific information relating to the Applicants but received no response from Professor McLaren or from WADA. RUSADA responded that, according to information available, the samples provided by the Applicants between 2010 and 2016 did not contain any prohibited substances.

2.7 On 27 July 2016, the First Applicant requested Professor McLaren to provide specific pieces of evidence related to them. Professor McLaren provided her with a statement previously published by WADA.

2.8 On 2 August 2016, the IOC sent a communication to the International Federations, which relevant part reads as follows:

"In view of the recent appeals filed by Russian Athletes with CAS, the IOC considers it necessary to clarify the meaning of the notion "implicated" in the EB Decision.

The IOC does not consider that each athlete referred to in the McLaren Lists shall be considered per se "implicated. It is for each International federation to assess, on the basis of the information provided in the McLaren lists and the Independent Person Report, whether it is satisfied that the Athlete in question was implicated in the Russian State-controlled doping scheme.

To assist the International Federations in assessing each individual case, the IOC wishes to provide some information. In the IOC's opinion, an athlete should not be considered as "implicated" where:

- *The order was a "quarantine".*

- *The McLaren List does not refer to a prohibited substance which would have given rise to an ant-doping rule violation or;*

- *The McLaren List does not refer to any prohibited substance with respect to a given sample."*

2.9 On 7 August 2016, pursuant to directions made by the Ad Hoc Division (see 3. below), Professor McLaren submitted an affidavit in this proceeding which included evidence of his findings in the IP Report. It is convenient to set his evidence, as relevant to the Second Applicant:

- *I found beyond a reasonable doubt, that:*

  1. *The Moscow Laboratory operated, for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*

  2. *The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian Athletes to compete at the Games.*

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

- The focus of his investigations to date had not been to establish ADRV cases against individual athletes or to conduct a Results Management investigation with respect to individual Russian athletes.

- He had, however, reviewed *"a considerable amount of reliable evidence, which clearly implicate individual athletes in the State-dictated doping cover up program"* described in the McLaren Report.

- As to the Second Applicant, Professor McLaren stated:

  On 15 August 2014 at 09:22 hours, in contravention of the International Standard for Laboratories, the Moscow Laboratory reported to Alexey Velikodniy that sample number 2916461, collected 10 August 2014 in connection with an International Competition being held in Moscow, contained a lot of marijuana that was certainly above the threshold. (The ICF website reflects that the ICF Canoe Sprint World Championships took place in Moscow from the 8-10 August 2014)Alexey Velikodniy's response to the Laboratory on 18 August 2014 at 08:59 identified that sample number 2916461 belonged to Mr. Alexey Korovashkov and instructed that it should be a 'SAVE." Alexey Velikodniy also notes that Mr. Alexey

Korovashkov's sample is under investigation. Mr. Korovashkov's sample number 2916461 was reported negative in ADAMS.

2.10 Professor McLaren also set out evidence concerning other samples taken from the Second Applicant. Those samples are not presently relevant as it is accepted by all Parties that they were taken out of competition.

3 CAS PROCEEDINGS

3.1 On 6 August 2016 at 11.15 (time of Rio de Janeiro), the Applicants filed a joint application with the CAS Ad Hoc Division against the Challenged Decision.

3.2 On the same day, the CAS Ad Hoc Division notified the Parties of composition of the Panel:

President: The Hon. Dr. Annabelle Bennett A.O. S.C., Australia

Arbitrators: Mr. José Juan Pintó, Spain
Mr. Jinwon Park, South Korea

3.3 On 6 August 2016, the Panel directed the Respondents to provide their reply to the Applicants' application and the Interested Parties their amicus curiae briefs before 9 August 2016 at 10.00 (time of Rio de Janeiro). Prof McLaren in turn was invited to file his amicus curiae brief by 8 August 2016 at 15.00 (time of Rio de Janeiro). The Parties and the Interested Parties were also summoned to appear at the hearing scheduled on 10 August 2016 at 10.00 (time of Rio de Janeiro).

3.4 On 7 August 2016, Professor Richard H. McLaren filed an affidavit.

3.5 On 7 August 2016, the Applicants filed further written submissions.

3.6 On 9 August 2016, the First Respondent sent a communication which relevant part reads as follows:

In preparation for the upcoming hearing for case CAS OG16/21 the ICF has been presented with additional information pertaining to Elena Anyushina's sample number 3865602 that is held in the Moscow laboratory which was unknown at the time of the filing.
Due to the additional information given to us regarding this urine sample and the need for further investigation, the ICF has agreed to withdraw the athlete's suspension. She is also eligible to compete in the Olympic Games should she meet the IOC's requirements on anti-doping testing and that the Russian NOC select her.
We are sorry for this late change of circumstances in the case. The ICF still contests the case for Alexey Korovashkov and we will file our submission later today.

3.7 On 9 August 2016, the ICF filed its reply limited to the application filed by Mr. Korovashkov.

3.8 The RCF did not file a reply.

3.9 On 9 August 2016, WADA sent a bundle of documents to the CAS. However, neither WADA nor the IOC filed an *amicus curiae* brief.

3.10 On 10 August 2016, at 9.00 (time of Rio de Janeiro), the hearing took place at the offices of the CAS Ad Hoc Division. The Panel was joined by Mr Antonio de Quesada, Counsel to the CAS, and the following persons also attended the hearing: Mr Simon Toulson, Secretary General of the ICF; Mr Ross Wenzel, counsel for WADA and Mr Nicolas Zbinden, counsel for the IOC. Mr Artem Patsev, counsel for the Applicants, participated in the hearing by teleconference. At the beginning of the hearing, the Parties confirmed they had no objection as to the composition of the Panel. The hearing concerning Ms. Anyushina was suspended pending further consideration of her eligibility for the Games of the XXXI Olympiad in Rio de Janeiro.

3.11 At the end of the hearing, the parties confirmed that their rights to be heard and to be treated equally have been respected.

3.12 On 10 August 2016, the ICF filed its Anti-Doping Regulations and subsequently identified Article 12.3 as the relevant regulation with respect to the Challenged Decision.

3.13 On 11 August 2016, the IOC confirmed that Ms. Anyushina was eligible to compete at the Games of the XXXI Olympiad in Rio de Janeiro. On the same date, Ms. Anyushina withdrew her application.

4 PARTIES' REQUESTS FOR RELIEF

4.1 The Parties' submissions and arguments concerning the Second Applicant shall only be referred to in the sections below if and when necessary, even though all such submissions and arguments have been considered. The Panel confirms that the First Applicant's application shall be deemed withdrawn.

a. *Second Applicant's Requests for Relief*

4.2 The Second Applicant's requests for relief are as follows:

- *This application is allowed.*
- *The decision of ICF of 25 July 2016 that declares the* [Second Applicant] *ineligible for participation in the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016, shall be set aside.*

- *The* [Second Applicant] *shall be declared eligible to participate in the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016.*

- *The IOC is obliged to accept the entries of the* [Second Applicant] *submitted by the ROC to compete in the Games of the XXXI Olympiad, in Rio de Janeiro, in 2016.*

- *[…]*

- *The substitution of the Second Applicant ordered by the RCF on 5 August 2016 shall be declared as invalid and unenforceable, and the Second Applicants quota in the Russian National team shall be restored.*

b. *ICF's Requests for Relief*

4.3 ICF'S requests for relief are as follows:

"The ICF kindly requests that the Ad Hoc CAS panel dismisses this appeal[1]."

5 JURISDICTION AND ADMISSIBILITY

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 In view of the above, the Panel considers that the CAS Ad Hoc Division has jurisdiction to hear the present matter. The jurisdiction of the CAS Ad Hoc Division was not contested in the written submissions and was expressly confirmed by all parties at the hearing.

5.3 Article 1 of the CAS Arbitration Rules for the Games of the XXXI Olympiad in Rio de Janeiro (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.*

[1] The appeal filed by Mr Korovashkov only.

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".

5.4 At the outset of the hearing, the Panel discussed with the Parties the fact that the IOC Decision and the ICF Statement were both rendered before the CAS Ad Hoc "window" opened, 10 days before the Opening Ceremony of the Rio Games. The parties expressly waived any objections to the admissibility of the Application and consented to the Panel hearing the matter and proceeding to render an Award.

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*".

6.2 These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport ("ICAS") on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("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.

6.3 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*".

7 DISCUSSION

7.1 This Application was filed prior to a number of decisions of the Ad Hoc Division of the CAS for the Games of the XXXI Olympiad in Rio de Janeiro concerning the implementation of the IOC Executive Board decision of 25 July 2016 and the subsequent communication from the IOC of 2 August 2016, concerning the response of the IOC to the publication of the report commissioned by WADA from Professor Richard McLaren as the Independent Person (the IP Report).

7.2 The Panel refers generally to the reasons for the decisions rendered in the procedures CAS OG 16/04, CAS OG 16/13 and CAS OG 16/19 (the earlier CAS decisions), with which this Panel agrees.

7.3 The Panel will not repeat the background matters as set out in the earlier CAS decisions, save to the extent necessary to explain these reasons.

7.4 As has been stated in the earlier CAS decisions, the IOC Executive Board responded to the timing of the IP Report with respect to the Games of the XXXI Olympiad in Rio de Janeiro and the findings in that report, made beyond reasonable doubt, of the existence of a State sponsored doping scheme in Russia, which Professor McLaren described in his affidavit as *"a State-dictated failsafe system, described in the [IP Report] as the Disappearing Positive Methodology"*. This methodology was said to have been applied to Russian athletes. The IP Report and its timing gave rise to what the IOC has described as "*extraordinary circumstances*". It has also been said by the IOC and WADA, as outlined in the earlier CAS decisions, that the system as set out in the IP Report represented the worst case of doping in the history of sport.

7.5 As has been stated in the earlier CAS decisions, it is accepted that the IOC has acted at all times in good faith. In the present case, the findings in the IP Report have not been challenged.

7.6 The Second Applicant has not withdrawn any of the arguments as set out in the Application but did not address some of those arguments at the hearing. Some of those arguments have already been addressed in the earlier CAS decisions. Rather, the Second Applicant advanced arguments based upon the evidence as provided by Professor McLaren with regard to the Second Applicant and the decision of the ICF Executive Committee of 26 July 2016 that followed the IOC Executive Board decision.

7.7 It should also be noted that, in the IP Report, Professor McLaren did not make findings against any individual athlete. He specifically stated that the IP Report was not concerned with results management and that his inquiry into individual athletes was ongoing. This was reiterated in his affidavit in the present case. Professor McLaren states that the focus of the IP investigation to date has not been to establish an Anti-Doping Rule Violation (ADRV) or to act as a Results Management Authority under the WADA Code, and that he did not attempt to conduct a Results Management investigation with respect to individual Russian athletes.

7.8 In the IP Report and in his evidence, Professor McLaren describes the system whereby the Russian Ministry of Sport *"directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping"*. The system was one in which, where a sample had an adverse or atypical screen, a decision was made by the Vice Minister of Sport that the athlete would be a SAVE. That is,

the sample was reported falsely as a negative and no further analysis was to be performed.

7.9 Professor McLaren has provided what he describes in his affidavit as "*reliable evidence*", being in this case evidence concerning the Second Applicant. Relevantly, that evidence, in the nature of electronic evidence, was tested and it was confirmed that it was created contemporaneously with the event in question, that is on 15 August 2013. That evidence is set out above.

The 'threshold' issue concerning marijuana

7.10 The Second Applicant submits that the evidence concerning the relevant sample on which the ICF relies to support its decision is unreliable. This is said to be because there is no "threshold" provided for marijuana in WADA Technical Document TD 2013DL of 11 May 2013 concerning Decision Limits for the Confirmatory Quantification of Threshold Substances, being the applicable document as at 15 August 2013.

7.11 The Second Applicant takes issue with Professor McLaren's evidence that the Moscow Laboratory reported that sample number 2916461, collected on 10 August in connection with an International Competition (the ICF Canoe Print World Championships in Moscow), contained *"a lot of Marijuana that was certainly above the threshold"* and resulted in a SAVE. That sample was reported negative in ADAMS.

7.12 The Second Applicant says that:

- If there is no threshold, it is unlikely that the laboratory would have provided such odd information to Alexey Velikodniy rather than reporting the threshold itself; the evidence does not resemble a laboratory report
- Correspondence could not have been authored by the laboratory's employees, who are fully aware that they would be required to calculate and then state the actual result.
- Professor Mclaren did not provide the correspondence to establish that it did come from the laboratory.

7.13 The Second Applicant did not ultimately dispute that marijuana is listed under category S8 in the WADA list of substances and methods prohibited in competition. That listing is stated to be:

S8 CANNABINOIDS

Natural (e.g. cannabis, hashis, marijuana) or synthetic de delta 9-tetrahydrocannabinol (THC) and cannabimimetics (e.g. "Spice", JWH018, JWHO73, HU 210) are prohibited.

7.14 The argument seems to be that, as there is no "threshold" for marijuana, the reference to "threshold" where it appears in Professor McLaren's evidence concerning communications to and from the Moscow Laboratory referring to marijuana *"certainly above the threshold"*, must be rejected.

7.15 This submission is made despite the following listing in Table 1 of the relevant WADA Technical Document TD 2013DL of 11 May 2013 concerning Decision Limits for the Confirmatory Quantification of Threshold Substances, which sets out the minimum requirement to be achieved by a Laboratory before a reporting of an Adverse Analytical Finding (AAF), relevantly:

Threshold substance	Threshold	Max. Combined Standard Uncertainty (Uc max) at T Absolute	Max. Combined Standard Uncertainty (Uc max) at T Relative (%)	Decision Limit
Carboxy- THC	150 ng /mLf	15 ng/mL	10	175 ng/mL

7.16 Further, Carboxy-THC is defined in the footnote to Table 1 as *11-nor-9-tetrahydrocannabinol-9-carboxylic acid* which equates to the Cannabinoids included in S8.

7.17 Despite this listing, the Second Applicant disputes that a threshold has been set as a decision limit by WADA. The Panel notes that if there is no threshold, any presence of marijuana would be considered sufficient to report an AAF.

7.18 It should be noted that the Second Applicant did not provide direct evidence to dispute the evidence of Professor McLaren. It is also the case that the evidence describes a course of conduct which mirrors the system that Professor McLaren found to exist beyond reasonable doubt. Professor McLaren described the evidence in his affidavit as *"reliable evidence"*. That evidence summarises electronic evidence from the relevant date which, he says, has been forensically tested to establish that it was created contemporaneously.

7.19 The Second Applicant has not established a basis for the rejection of Professor McLaren's evidence. The reference to "threshold" does not render the evidence in Professor McLaren's evidence unreliable, nor provide a basis to reject that evidence.

7.20 Accordingly, the evidence is that the State sponsored doping system was applied to the Second Applicant so as to prevent a positive report of marijuana over the threshold for that substance. It follows that the Second Applicant was implicated in the IP Report (CAS OG 16/19). He therefore failed to fulfil the criteria in paragraph 2 of the IOC Executive Board's decision, to be implemented by the International Federations. Those criteria, as further explained in the IOC communication of 2 August 2016, have to be fulfilled by an athlete to overcome

the "collective responsibility" accorded to Russian athletes by the IOC Executive Board's decision. Consequently, the Second Applicant could not be accepted for entry or accreditation for the Games of the XXXI Olympiad in Rio de Janeiro.

7.21 At this juncture, the Panel records its sympathy for the Second Applicant. The ICF indicated that marijuana is not, in its view, a performance enhancing drug and the Panel notes that there is no suggestion of any other substance involved. However, it is not for the Panel to discuss or revisit the decision to include marijuana in S8.

The decision of the ICF

7.22 The Second Applicant submits that the decision of the ICF Executive Board amounted to a decision to suspend for an anti-doping violation under the WADA Code, contrary to the provisions of that Code. Accordingly, he submits, the decision should be set aside.

7.23 The basis for this submission is the use by the ICF Executive Board of the word "suspended" in the context of *"suspended immediately"* in its letter to the RCF setting out the Challenged Decision. The Second Applicant submits that this is the terminology of WADA and means that the decision was taken under the WADA Code.

7.24 This submission should be rejected. "Suspended" is an ordinary English word. While it is a word used, and a sanction provided for, in the WADA Code, this does not mean that its inclusion means that the decision is made under that Code. A number of matters argue against such a conclusion, including the letter in which the word is used. In that letter from the President of the ICF and addressed to the Russian Canoe Federation:

- There is no mention of WADA, the WADA Code, or an anti-doping violation.
- The introduction in the letter cites the IP Report and the IOC Executive Board decision and the investigation into the "*listed athletes*".
- The letter refers to "*our investigation so far*".
- The letter cites six cases for international level athletes "*in your team*", of which the Second Applicant is one
- One athlete is said not to be entered in the Olympic Games; contrary to the other athletes who were suspended immediately, her suspension was said to be pending a hearing "*to be held in due time*".
- Further information would be sought with respect to athletes not declared by RUSADA for whom further information would be requested
- It is stated that this was a ban on athletes from competing at the Olympic Games

7.25 It is clear that the letter was in direct response to the IOC Executive Board's decision and concerned the eligibility of Russian athletes to compete in the

Games of the XXXI Olympiad in Rio de Janeiro Games and to be accredited to those Games. It was not a decision under the WADA Code and was not bound by the provisions of that Code.

7.26 Accordingly, this attack on the ICF Executive Board decision fails.

7.27 The ICF has identified the IOC Executive board's decision and the IOC correspondence of 2 August 2016 and Article 12.3 of the ICF Anti-doping Rules as the basis for the making of the Challenged Decision. The Second Applicant has not challenged the ICF's right to make the Challenged Decision on such basis and the Panel will not consider this question further.

Remaining issues

7.28 In the Application, the Second Applicant has raised a number of matters in respect of the IOC Executive Board decision of 24 July 2016 and, in particular, his argument that the criteria in paragraph 2 therein constituted a sanction. That issue has been determined, inter alia, in the earlier CAS decisions.

7.29 The Second Applicant also asserted in the Application that he had been denied natural justice, specifically that he was entitled to the application of the provisions of the WADA Code. This decision of the ICF and that of the IOC Executive Board were not made under the WADA Code. The decisions concerned the eligibility of the Applicant to compete in the Games of the XXXI Olympiad in Rio de Janeiro and not a sanction for an ADRV.

7.30 The Second Applicant has been given an opportunity to rebut the case made against him and to rebut the applicability of the collective responsibility for implication in the State sponsored doping system described in the IP Report as applied by the IOC Executive Board.

8 CONCLUSION

8.1 The Second Applicant has not established a basis for setting aside the ICF decision that he is ineligible for participation in the Games of the XXXI Olympiad in Rio de Janeiro.

8.2 The Second Applicant's application should be dismissed.

8.3 The Panel confirms that the application of the First Applicant shall be deemed withdrawn.

DECISION

The ad hoc Division of the Court of Arbitration for Sport rules that:

1. The application filed on 6 August 2016 by Ms. Elena Anyushina is deemed withdrawn.

2. The application filed on 6 August 2016 by Mr. Alexey Korovashkov is dismissed.

Rio de Janeiro, 11 August 2016

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Annabelle Bennett
President of the Panel

José Juan Pintó
Arbitrator

Jinwon Park
Arbitrator