DECISION

of the

IOC Disciplinary Commission

sitting in the following composition:
Denis Oswald, Chairman
Gunilla Lindberg
Tony Estanguet

in the proceedings

against

Sergei CHUDINOV

born on 8 June 1983, Russian Federation, Athlete, Skeleton

(SML – 001)

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I. FACTS

1. Sergei CHUDINOV (hereinafter the "**Athlete**" or the "**Athlete Chudinov**") participated in the XII Olympic Winter Games in Sochi, Russia, in 2014 (the "**Olympic Winter Games Sochi 2014**"). The Athlete was identified on this occasion through his accreditation, which bore the reference number 2001865.

2. From 14 to 15 February 2014, the Athlete competed in the Men's Individual Skeleton Event, in which he ranked 5th and for which he was awarded a diploma.

3. On 11 February 2014, the Athlete was requested to provide a urine sample for doping control. Such sample was identified with the number 2892244.

4. On 15 February 2014, the Athlete was also requested to provide a urine sample for doping control. Such sample was identified with the number 2889144.

5. The A-Samples 2892244 and 2889144 were analysed during the Olympic Winter Games Sochi, by the WADA-accredited laboratory in Sochi, Russia (the "**Sochi Laboratory**"). Such analytical analysis did not result in an adverse analytical finding at that time.

6. After the conclusion of the Olympic Winter Games Sochi 2014, the samples collected upon the occasion of the Olympic Winter Games Sochi 2014 were transferred to the WADA-accredited laboratory, *Laboratoire suisse d'analyse du dopage* in Lausanne, Switzerland (the "**Lausanne Laboratory**") for long-term storage.

7. On 3 December 2014, the German television channel ARD aired the documentary "Top Secret Doping: How Russia makes its Winners", alleging the existence of a sophisticated system of state-sponsored doping. Implicated in the documentary were Russian athletes, coaches, national and international sport federations, the Russian Anti-Doping Agency ("**RUSADA**") and the WADA-accredited laboratory in Moscow (the "**Moscow Laboratory**").

8. In response to these allegations, the World Anti-Doping Agency ("**WADA**") established an Independent Commission chaired by Richard W. Pound, Q.C., Ad.E (the "**IC**") to conduct an independent investigation into, *inter alia*, doping practices in Russia, corrupt practices around sample collection and results management, other ineffective administration of anti-doping processes in Russia, the Moscow Laboratory and RUSADA.

9. On 9 November 2015, the IC submitted to WADA the Independent Commission Report #1 (the "**IC Report 1**"). The IC investigative findings were, *inter alia*, that the investigation had confirmed the existence of widespread cheating through the use of doping substances and methods in Russia to enhance the likelihood of victory for athletes and teams and that the cheating was done by the athletes' entourages, by officials and by the athletes themselves.

10. The IC Report 1 notably describes the involvement of the Moscow Laboratory in cover-up operations and the central role of its director, Dr Grigory Rodchenkov.

11. One of the findings of the report was that the Moscow Laboratory had been performing undocumented analysis on samples not contained in regular bottles (IC Report 1, p. 278-80, #11, see also p.206).

12. On 14 January 2016, the IC submitted to WADA the Independent Commission Report #2 (the "**IC Report 2**"), which focused on doping in the sport of athletics in Russia.

13. From March 2016, the IOC conducted a massive reanalysis program on samples collected from athletes of various nationalities, including Russian athletes, on the occasion of the Games of the XXIX Olympiad, Beijing 2008 and the Games of the XXX Olympiad, London 2012. The reanalysis program was launched following an intelligence-gathering process that started in August 2015, in consultation with WADA and the International Federations.

14. The results of the re-analysis showed a strikingly high level of doping. More than 100 Adverse Analytical Findings ("**AAF**") were established. The Russian athletes formed the largest group of athletes concerned, with one Prohibited Substance being highly prevalent (oralturinabol). These results confirmed the existence of widespread doping in Russia.

15. In the first part of May 2016, the American news magazine '60 Minutes', and then The New York Times, reported allegations regarding activities to cover-up doping during the Olympic Winter Games Sochi 2014. The primary source of these allegations was Dr Rodchenkov.

16. On 19 May 2016, WADA announced the appointment of Professor Richard H. McLaren, as Independent Person ("**IP**") to conduct an investigation of the allegations made by Dr Rodchenkov.

17. On 16 July 2016, the IP submitted to WADA the Independent Person Report (the "**IP Report 1**"), according to which, *inter alia*, (i) the Moscow Laboratory operated, for the protection of doped Russian athletes, within a State directed failsafe system, described in the report as the Disappearing Positive Methodology ("**DPM**"), (ii) the Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian athletes to compete at the Olympic Winter Games Sochi 2014, and (iii) the Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the Federal Security Service of the Russian Federation ("**FSB**"), the Center of Sports Preparation of National Teams of Russia ("**CSP**"), and both the Moscow Laboratory and the Sochi Laboratory.

18. Some of the findings of the IP Report 1 were that (i) Dr Rodchenkov, in the context of the subject matter within the IP mandate, was a credible and truthful person, (ii) all other witnesses interviewed by the IP team were credible, and (iii) the Moscow Laboratory personnel did not have a choice in whether to be involved in the State directed system.

19. Regarding the Moscow Laboratory, it was found that (i) the Moscow Laboratory operated under State oversight and control of its anti-doping operational system, (ii) the Moscow Laboratory personnel were required to be part of the State directed system that enabled Russian athletes to compete while engaging in the use of doping substances, (iii) the Moscow Laboratory was the final failsafe protective shield in the State directed doping regime, (iv) sample bottles stored in the Moscow Laboratory from 10 September to 10 December 2014 were tampered with by having their urine swapped, (v) the DPM was planned and operated over a period from at least late 2011 until August 2015, and (vi) Russian athletes from the vast majority of summer and winter Olympic sports benefited from the DPM.

20. With respect to the Sochi Laboratory, it was found that (i) the planning for the Sochi Laboratory sample swapping scheme involved the Ministry of Sport, the FSB, CSP and the Moscow Laboratory, (ii) a pre-selected group of Russian athletes competing at Sochi were protected by the Sochi sample swapping methodology, (iii) the analysis conducted by the IP team had established that some samples had salt levels in excess of those which could be found in the urine of a healthy human, thereby confirming interview evidence that salt had been added to athletes' samples, (iv) sample bottles examined by the IP investigation team revealed evidence of tampering consistent with the caps being removed and reused, (v) DNA analysis identified 3 samples where the DNA did not match that of the athlete who provided the sample.

21. On 22 September 2016, pursuant to the allegations contained in the IP Report 1 and in accordance with Rule 59.2.4 of the Olympic Charter, the IOC President, Mr Thomas Bach, established a Disciplinary Commission chaired by Mr Denis Oswald to initiate, *inter alia*, reanalysis, including forensic analysis, and a full inquiry into all Russian athletes who participated in the Olympic Winter Games Sochi 2014 as well as their coaches, officials and support staff.

22. On 9 December 2016, the IP submitted the Independent Person's 2nd Report (the "**IP Report 2**"), which details the investigations conducted by the IP team between July and November 2016. The IP Report 2 allowed a clearer picture to be formed and confirmed the findings of the IP Report 1. It identified summer, winter, and Paralympic athletes involved in the doping cover-up and manipulation. Accompanying the IP Report 2, the IP released non-confidential evidence examined in the course of its investigations, *i.e.* the Evidence Disclosure Package ("**EDP**").

23. The IP Report 2 confirmed the following findings:

    (i) an institutional conspiracy existed amongst summer and winter sports athletes, who cooperated with Russian officials within the Ministry of Sport, officials within its infrastructure (such as the RUSADA, CSP and the Moscow Laboratory) and with the FSB, for the purposes of manipulating doping controls. The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported in the IP Report 1;
    (ii) the systematic and centralised cover-up manipulation of the doping control process evolved and was refined over the course of its use at the Olympic Games London 2012, University Games 2013, Moscow IAAF World Championships 2013, and the Olympic Winter Games Sochi 2014;
    (iii) the swapping of Russian athletes' urine samples further confirmed in the IP Report 2 as occurring at Sochi, did not stop at the close of the Olympic Games. The sample swapping technique used at Sochi became a regular monthly practice of the Moscow Laboratory in dealing with elite summer and winter athletes;
    (iv) the key findings of the IP Report 1 remain unchanged; it confirmed that the forensic testing, which was based on immutable facts, was conclusive.

24. Regarding the athletes, the IP Report 2 indicates that hundreds of Russian athletes competing in summer, winter and Paralympic sports, could be identified as being involved in, or benefiting from, manipulations to conceal positive doping tests. The IP Report 2 mentions that 95 winter athletes were implicated.

25. With respect to the Olympic Winter Games Sochi 2014, the IP found, *inter alia*, that sample swapping was established and corroborated by the objective findings made through forensic examination of scratches and marks, salt content analysis and DNA analysis, all indicating tampering of the urine samples.

26. The IP Report 2 provided elements of evidence in relation to the identification of the athletes who had benefitted from the doping scheme.

27. In addition to the elements already included in the IP Report 1 and IP Report 2 (together the "**McLaren Report**") and in the EDPs published on the EDP website (including *inter alia* the Duchess List), the IOC was further provided with the IP Information Report addressed to the relevant International Federation.

28. On 22 December 2016, the IOC notified the Athlete, through the Russian Olympic Committee (the "**NOC**"), of the commencement of disciplinary proceedings against him, which were to be conducted by the IOC Disciplinary Commission.

29. The Disciplinary Commission would, as a first step, conduct investigations to determine the circumstances of the potential anti-doping rule violation(s).

30. The alleged anti-doping rule violation asserted at the time was "tampering or attempted tampering with any part of Doping Control". The right to assert further anti-doping rule violations, based on information brought to light in the course of further investigations, was expressly reserved. The Athlete was invited to provide the IOC with any explanation or relevant information regarding the above-mentioned circumstances.

31. On 30 December 2016, the NOC acknowledged receipt of the Notification Letter dated 22 December 2016 and requested the relevant evidence with respect to the forensic examinations conducted under the responsibility of the IP (i.e. scratches and marks, salt content, DNA). The NOC also forwarded a letter from the Athlete dated 28 December 2016, in which the Athlete described the sample collection in Sochi.

32. From January to March 2017, discussions were held between the IOC, the School of Criminal Justice (*Ecole des Sciences Criminelles*) ("**ESC**") of the Faculty of law, Criminal Justice and Public Administration (FDCA) of the University of Lausanne, and the Lausanne Laboratory, with a view to commissioning a study to determine whether or not marks found on BEREG-KIT bottles with urine samples collected by the IOC from Russian athletes, during the Olympic Winter Games Sochi 2014, were indicative of tampering.

33. A formal agreement regarding the study was executed on 10 March 2017. Prof. Christophe Champod, full professor of forensic science at the ESC and an expert in marks, was the expert in charge thereof.

34. The IOC also commissioned Prof. Michel Burnier of the University of Lausanne to conduct a study of the salt content of all A-Samples collected from Russian athletes during the Olympic Winter Games Sochi 2014. The values of samples collected during the XXI Olympic Winter Games in Vancouver, 2010 were used to establish reference values for the study. The purpose of the study was to verify if certain samples collected in Sochi contained abnormal salt levels, as had been established by the experts appointed by the IP, who had examined a certain number of samples.

35. On 26 January 2017, the Disciplinary Commission acknowledged receipt of the written explanations filed by the Athlete and indicated that further investigations would be conducted.

36. On the same day, in response to the letter dated 30 December 2016, the Disciplinary Commission reminded the NOC of the content of the Notification Letter dated 22 December 2016.

37. On 23 February 2017, the IOC advised the Athlete, through his NOC, that the schedule of the forensic examination had been confirmed and that the results of the investigation of the forensic team were expected to be issued approximately 10 weeks later. This was the expectation based on the information available at that time.

38. On 19 October 2017, the IOC provided the Athlete, through his NOC, with the EDP received from the IP in connection with the Athlete and a dossier of evidence specific to the case, also received from the IP.

39. This dossier of evidence included the following elements:

    - The Sochi Duchess List (redacted by the IP and encoded), on which the name of the Athlete appeared;
    - The Medal by Day List, on which the name of the Athlete also appeared;
    - The IP Dossier sent to the IOC, containing a general summary of the investigation and specific elements related to the Athlete;
    - The forensic report issued by experts mandated by the IP in connection with scratches and marks examinations. This includes a specific forensic report related to the B-Sample 2889144, according to which various scratches and marks were observed.

40. In the same communication, the IOC provided the Athlete with elements from the additional investigations it had performed.

41. These elements included:

    - The Report of the Methodology Developed for the Forensic Examination of Marks Visible on the Inside of the Plastic Caps of BEREG-KIT Bottles and their Potential Association with Tampering Activity Using Tools dated 27 July 2017 and issued by Prof. Champod;

    - One specific forensics report related to the examination of the B-Sample 2889144, according to which no so-called T marks had been observed on the sample.

    - Information that the B-Sample 2892244 collected on 11 February 2014 was still subject to forensic examination.

42. The IOC also informed the Athlete that the hearing of the Disciplinary Commission would be held on 13 November 2017 and invited the Athlete to file written submissions by 6 November 2017.

43. The NOC and the International Bobsleigh & Skeleton Federation ("**IBSF**") were also invited to attend the hearing as interested parties and to file written observations by 6 November 2017.

44. On 20 October 2017, the IBSF informed the IOC that Ms Heike Groesswang, Secretary General, would represent the International Federation ("**IF**") for the hearing.

45. On 2 November 2017, Mr Philippe Bärtsch and Mr Christopher Boog, attorneys-at-law at Schellenberg Wittmer Ltd, informed the IOC that they would act as the Athlete's representatives. The Athlete's counsels requested to extend the time limit to file a written defence until 10 November 2017 at noon.

46. On 2 November 2017, the IOC informed the Athlete's counsels that the deadline to file a written defence was extended until 2 November 2017 at noon.

47. The results of the forensic report related to the B-Sample 2892244 were reported to the Athlete on 2 November 2017.

48. On 8 November 2017, the IOC provided the Athlete and the Disciplinary Commission with an affidavit from Prof. McLaren and an affidavit from Dr Rodchenkov.

49. On 9 November 2017, the IBSF informed the IOC that at the hearing of 13 November 2017 the IBSF will be represented by the IBSF Anti-Doping Officer Mr Raik Bauerfeind.

50. On the same day, the IOC noted that the all the parties agreed to conduct a joint hearing for the Athlete Chudinov and four other athletes (SML – 007, SML – 014, SML – 023 and SML – 024).

51. On 10 November 2017, the Athlete filed his written submissions.

52. The hearing of the Disciplinary Commission was held on 13 November 2017 at the IOC Headquarter in Lausanne, Switzerland.

53. The Athlete participated at the hearing via videoconference and was assisted by Mr Philippe Bärtsch, Ms Anna Kozmenko, Mr Philip Wimalasena and Artem Patsev, attorneys-at-law, and Mr Andrey Dolgov, interpreter.

54. The NOC was represented at the hearing by Mr Artem Koshel. Mr Raik Bauerfeind, IBSF Anti-Doping Officer, represented the IF.

55. The IOC was represented by Mr Jean-Pierre Morand and Mr Nicolas Français, IOC external legal counsels.

56. Prof. Christophe Champod and Mr Neil Robinson were heard as witnesses called by the IOC.

57. Mr Alexei Bushin and Ms Vera Burova, both forensic experts, were heard as witnesses called by the Athlete.

II. APPLICABLE RULES

58. These proceedings are conducted in application of The International Olympic Committee Anti-Doping Rules applicable to the XXI Olympic Winter Games in Sochi, in 2014 (the "**IOC Anti-Doping Rules**").

59. Art. 1 of the IOC Anti-Doping Rules provides as follows:

"*The application of the Code – Definition of Doping – Breach of the Rules*

1.1 The Commission of an anti-doping rule violation is a breach of these Rules.
1.2 Subject to the specific following provisions of the Rules below, the provisions of the Code and of the International Standards apply mutatis mutandis in relation to the Sochi Olympic Winter Games."

60. Art. 2 of the IOC Anti-Doping Rules provides that, with certain identified amendments, *"Article 2 of the Code applies to determine anti-doping rule violations.*"

61. Art. 2 of the 2009 World Anti-Doping Code ("**2009 WADC**") provides as follows:

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

62. Art. 2.2 of the 2009 WADC provides as follows:

"*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. 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.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed."

63. Art. 2.5 of the 2009 WADC provides as follows:

"*The following constitute anti-doping rule violations:*
[..]
Tampering or Attempted Tampering with any part of Doping Control."

64. Art. 2.8 of the 2009 WADC provides as follows:

"*The following constitute anti-doping rule violations:*
[..]
Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or any Prohibited Substance that is prohibited Out-of-Competition, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation."

65. Art. 3 of the 2009 WADC provides as follows:

"*Proof of Doping*

3.1 Burdens and Standards of Proof

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof.

- Methods of Establishing Facts and Presumptions

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

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

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

3.2.1 Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation occurred, then the Anti-Doping Organisation shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.

3.2.2 The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts unless the Athlete or other Person establishes that the decision violated principles of natural justice.

3.2.3 The hearing panel in a hearing on an anti-doping rule violation may draw an inference adverse to the Athlete or other Person who is asserted to have committed an anti-doping rule violation based on the Athlete's or other Person's refusal, after a request made in a reasonable time in advance of the hearing, to appear at the hearing (either in person or telephonically as directed by the hearing panel) and to answer questions from the hearing panel or the Anti-Doping Organization asserting the anti-doping rule violation."

66. Art. 4.2.1 of the 2009 WADC provides as follows:

"*Prohibited Substances and Prohibited Methods*

The Prohibited List shall identify those Prohibited Substances and Prohibited Methods which are prohibited as doping at all times (both In-Competition and Out-of-Competition) because of their potential to enhance performance in future Competitions or their masking potential and those substances and methods which are prohibited In-Competition only. The Prohibited List may be expanded by WADA for a particular sport. Prohibited Substances and Prohibited Methods may be included in the Prohibited List by general category (e.g., anabolic agents) or by specific reference to a particular substance or method."

67. Chapter M2.1 of the 2009 Prohibited List provides as follows:

"*M2. Chemical and Physical Manipulation*

1. *Tampering, or attempting to tamper, in order to alter the integrity and validity of Samples collected during Doping Controls is prohibited. These include but are not limited to catheterisation, urine substitution and/or alteration.*"

68. Art. 6.2.9 of the IOC Anti-Doping Rules provides as follows:

"*Nature and circumstances of violation; adducing evidence*

The Disciplinary Commission shall determine the nature and circumstances of any anti-doping rule violation which may have been committed. It shall allow the Athlete or other Person concerned an opportunity to adduce any relevant evidence, which does not require the use of disproportionate means (as decided by the Disciplinary Commission), which the Athlete or other Person deems helpful to the defence of this case in relation to the result of the test, or other anti-doping rule violation, either orally, before the Commission, or in writing, as the Athlete or other Person concerned so wishes."

69. Art. 6.2.10 of the IOC Anti-Doping Rules provides as follows:

"*Opinion of experts, adducing other evidence*

The Disciplinary Commission may seek the opinion of experts or obtain other evidence on its own motion."

70. Art. 7.1 of the IOC Anti-Doping Rules provides as follows:

"*Automatic Disqualification*

A violation of these Rules in Individual Sports in connection with Doping Control automatically leads to Disqualification of the Athlete's results in the Competition in question, with all other consequences, including forfeiture of any medals, points and prizes."

71. Art. 7.3 of the IOC Anti-Doping Rules provides as follows:

"*The Disciplinary Commission or the IOC Executive Board, as the case may be, may declare the Athlete, as well as other Persons concerned, temporarily or permanently ineligible for editions of the Games of the Olympiad and the Olympic Winter Games subsequent to the Sochi Olympic Winter Games.*"

72. Art. 8.1 of the IOC Anti-Doping Rules provides as follows:

"*Disqualification of Sochi Olympic Winter Games Results*

An anti-doping rule violation occurring during or in connection with the Sochi Olympic Winter Games may lead to Disqualification of all of the Athlete's results obtained in the Sochi Olympic Winter Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 8.1.1.

8.1.1 If the Athlete established that he or she bears No Fault or Negligence for the violation, the Athlete's results in the Competitions (for which the Athlete's results have not been automatically Disqualified as per Article 7.1 hereof) shall not be Disqualified unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation."

73. Art. 8.3 of the IOC Anti-Doping Rules provides as follows:

"*Consequences of Anti-Doping Rule Violations beyond Disqualification:*

The Consequences of Anti-Doping Rule Violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the Sochi Olympic Winter Games, shall be managed by the relevant International Federations."

III. DISCUSSION

A. MISSION OF THE DISCIPLINARY COMMISSION

74. This Disciplinary Commission has been established by the IOC President after the publication of the findings of the IP, Prof. McLaren, contained in his reports (the IP Report 1 and the IP Report 2).

75. The main conclusion of the investigations conducted by Prof. McLaren was the confirmation of the existence of an institutionalised doping system involving Russian athletes, notably at the Olympic Winter Games Sochi 2014.

76. The mission of the Disciplinary Commission was to conduct investigations, including forensic analyses and a full inquiry into Russian athletes who participated in the Olympic Winter Games Sochi 2014, to determine whether Russian athletes, and if so, which athletes, had actually participated in the conspiracy demonstrated by Prof. McLaren and benefitted from it.

77. Based on information contained in the McLaren Reports and the evidence provided by the IP to the relevant International Federations (the "**IFs**"), the Disciplinary Commission opened proceedings against a first group of 28 Russian athletes in December 2016.

78. The athletes were informed of the opening of the proceedings and also that the Disciplinary Commission would have first to conduct further investigations.

79. The Athlete Chudinov was one of these athletes.

B. CONDUCT OF INDIVIDUAL PROCEEDINGS

80. By its nature, a conspiracy of this type, aimed at shielding a group of athletes, involves a number of people, including the athletes intended to be "protected" by the cover-up scheme.

81. The Disciplinary Commission has not sought to apply collective justice nor issue collective sanctions. This would have meant issuing sanctions against all Russian athletes who participated in Sochi, without considering whether the available evidence suggests their personal implication in the doping and/or cover-up scheme.

82. On the contrary, the Disciplinary Commission has indicated on several occasions that it would not apply collective sanctions against the Russian athletes as was done by other sporting organisations. The Disciplinary Commission has decided to examine each case individually and to only sanction athletes in respect to whom it finds that there is enough evidence of their personal implication in violations of the anti-doping rules.

83. This principle will be applied for all the related cases that the Disciplinary Commission will have to handle, including the case of the Athlete Chudinov. However, once the existence of a general scheme aimed at cheating is established, this may be taken into consideration by the Disciplinary Commission when assessing the evidence before it concerning each individual athlete.

C. PROOF

84. Art. 3.1 of the 2009 WADC, which is applicable to these proceedings through the general reference contained in Art. 1.2 of the IOC Anti-Doping Rules, states the following: "*The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred*".

85. The Disciplinary Commission observes that, when Prof. McLaren published the first part of his report, just before the Olympic Games in Rio, the IOC decided not to ban all Russian athletes from participating in these Games.

86. However, the IOC considered that the revelations of Prof. McLaren were so serious and so far-reaching that it was justified to establish a presumption that all top-level Russian athletes had been part of that system and that only the athletes who could rebut such a presumption would be accepted at the Games.

87. As the Russian system was designed to cover-up doping and to hide any trace of violation, the shifting of the burden of proof was a reasonable and justified approach.

88. The Disciplinary Commission did consider the option of following the same approach, particularly in the context of additional elements having emerged in the meantime, confirming the existence of a conspiracy, particularly in relation to the Olympic Winter Games Sochi 2014.

89. Nevertheless, the Disciplinary Commission decided to apply the legal principle contained in Art. 3.1 of the 2009 WADC.

90. It is important to underline what the Disciplinary Commission has to establish, in accordance with the applicable standard in these proceedings.

91. The subject matter of these proceedings is indeed not to establish whether a 'traditional' anti-doping rule violation, consisting of the presence of a Prohibited Substance, has been committed. In such a case, the analytical analysis reveals the factual element of the anti-doping rule violation, objectively and directly.

92. In the present context, what the Disciplinary Commission has to assess is the existence of a cover-up scheme and, further, the Athlete's implication therein.

93. The cover-up in question is a complex process. It involves the collection of clean urine, the organisation of a clean urine bank, monitoring of the collection after each event (to identify the samples to be swapped), covert opening of sealed samples, and urine substitution (including, when necessary adjustment of specific gravity).

94. A cover-up scheme is by nature and purpose elusive. The swapping of the samples had precisely the purpose of making direct evidence of an anti-doping rule violation disappear (by destroying the true samples). Certain types of direct objective evidence are therefore, and by definition, not available.

95. The evidence of a cover-up is typically either witness evidence or circumstantial evidence from which the application of the process can be inferred.

96. The assessment of evidence of this type requires the decision making-body to make a global evaluation of all the elements at its disposal, to weigh their significance and to determine whether and how each element fits with, and corroborates, the other elements, as in a puzzle. At the end of the process, the decision making-body must be comfortably satisfied that the global picture presented by the available evidence corresponds to reality.

97. This is how the Disciplinary Commission has considered the evidence available to it in this case and assured itself that the burden of proof necessary to reach a conclusion in application of Art. 3.1 2009 WADC has been discharged.

98. The Swiss Federal Tribunal confirmed (Swiss Supreme Court Decision dated 31 March 1999, 5P.83/1999) that disciplinary matters were not subject to the standards applicable in criminal proceedings, but were subject to the standards applicable in civil law.

99. Therefore, the standard of proof is not "*beyond any reasonable doubt*", but rather the "*balance of probability*".

100. For the purpose of anti-doping proceedings, CAS jurisprudence has defined a specific standard, defined as "*comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made*".

101. This standard was formally included in Art. 3.1 2009 WADC.

102. The Disciplinary Commission has therefore assessed the evidence in this case in accordance with the test of comfortable satisfaction of the Commission, as described above.

D. THE EVIDENCE AT THE DISPOSAL OF THE DISCIPLINARY COMMISSION

103. When assessing the case of the Athlete Chudinov, the Disciplinary Commission had at its disposal and considered the following elements of evidence:

a. Evidence obtained from Prof. McLaren

1. The McLaren Report and the Affidavit from Prof. McLaren

104. Preliminarily, the Disciplinary Commission observes that the Athlete has sought to argue that no evidence could be drawn from the McLaren Report.

105. According to the Athlete, this conclusion arises from Prof. McLaren's own statements.

106. The Disciplinary Commission has come to a different conclusion.

107. It finds that the content of Prof. McLaren's reports and the evidence Prof. McLaren provided are highly relevant and can and should be used in these proceedings.

108. Prof. McLaren has explained on various occasions the purpose and scope of his mission, which was the establishment of the existence of a doping conspiracy.

109. In this respect, the evidence set out in the report is extremely strong.

110. The compelling findings made by Prof. McLaren include the confirmation of the existence, during the Olympic Winter Games Sochi 2014, of a scheme in which the samples of protected Russian athletes, notably but not only athletes on a preselected list, were swapped, *i.e.* substituted with clean urine to allow these athletes to compete with immunity from doping controls (IP Report I, p.87).

111. These findings were not only based on the witness evidence provided by Dr Rodchenkov. Prof. McLaren heard other witnesses and obtained forensic and analytical studies, which corroborated the implementation of the alleged scheme.

112. The global evidence obtained by Prof. McLaren is very strong with regard to the existence of the scheme. It allows a conclusion about the existence and implementation of the scheme in Sochi (and well beyond Sochi), which Prof. McLaren describes as "beyond reasonable doubt".

113. The Disciplinary Commission can only concur with that conclusion.

114. The relevance of the elements related to individual athletes has to be considered from a different perspective.

115. The Disciplinary Commission observes that in his reports and specifically in the IP Report 2 (p.35 ff.), Prof. McLaren carefully explained how the elements provided in his reports regarding individual athletes had to be understood and used.

116. Since Prof. McLaren was not acting as a results management authority, he correctly clarified that it was not his task to evaluate whether the evidence regarding individual athletes was sufficient to establish the commission of anti-doping rule violations by such athletes.

117. At the same time, Prof. McLaren also clearly indicated that his mission, especially in the context of the second part of his report, included the collection and provision of elements identifying the implication of individual athletes.

118. These elements are collected and provided to the relevant results management authorities in so-called "EDPs".

119. The Disciplinary Commission is the hearing body of the IOC and the results management authority in charge of the implementation of the anti-doping rules applicable at the Olympic Winter Games Sochi 2014.

120. As such, the Disciplinary Commission is also the authority responsible for assessing the relevant evidence in cases concerning the application of the IOC Anti-Doping Rules.

121. The relevant evidence in this respect unquestionably includes the elements provided in the reports and also in the EDPs, which Prof. McLaren prepared for that very purpose in respect of each of the athletes against which the Disciplinary Commission has opened proceedings.

122. The Disciplinary Commission observes that Prof. McLaren has done a great job with his team, collecting a lot of information, interviewing many people, studying several e-mails and other documents, and comparing and cross checking information from various sources.

123. The IP Report 1, the IP Report 2 and the EDPs contain a wealth of relevant elements, which have contributed to help the Disciplinary Commission to understand the scheme put in place in Sochi and the implication of athletes therein.

124. Prof. McLaren also commissioned a first forensic expertise of some of the urine bottles and an analysis of their salt content, to determine if objective indications could be found on and in the bottles objectively corroborating that they had been tampered with.

125. A significant amount of work has been carried out by Prof. McLaren and his team under very difficult circumstances and a significant time pressure. The counsels of the Athlete have sought to undermine this work on the basis that it contained a small number of mistakes, or that some figures or references were reported incorrectly and/or were changed. However, having considered the matter carefully, the Disciplinary Commission considered that these details did not affect the overall value and credibility of the evidence provided by Prof. McLaren in the reports and in the EDPs.

126. These evidential elements (pieces of the puzzle) form an important part of the overall body of available evidence.

127. In view of the specificity of cases that involve a scheme whose purpose was to suppress evidence, the Disciplinary Commission underlines that the conclusions it reaches do not necessarily arise from one specific element of evidence, but rather from the addition of concurring elements of both circumstantial and direct evidence, when such evidence is available (marks on bottles, abnormal salt levels).

128. In this context, the conclusive findings of Prof. McLaren regarding the existence of a scheme, and the elements of evidence he provides in the EDPs regarding the identification of the individual implicated athletes, are essential.

129. Prof. McLaren provided an affidavit on 27 October 2017, which adequately clarified the significance of the elements of evidence he provided, and put them in perspective.

130. The Disciplinary Commission observes that Prof. McLaren's credibility is unquestionable, and further finds that his reports are a well-founded confirmation of the system that was in place in Russia. Even if Prof. McLaren is an indirect witness, he is the best placed person to provide evidence, due to his broad and deep knowledge of the cover-up scheme in question.

131. The Disciplinary Commission finds therefore that it can and will rely on the findings and elements of evidence provided by Prof. McLaren as part of the elements of evidence it takes into account to reach its own findings.

132. The Disciplinary Commission observes that same conclusion was reached in the award *CAS 2017/O/5039*, which found that *"the combination and different type of facts provided by the Second IP report with respect to any individual athlete are circumstantial evidence that can be used to establish an ADRV"* (cited award, p.20 #91). The same award accepted the evidence provided by Prof. McLaren as establishing both the existence of a State-dictated doping scheme and the informed participation of the athletes therein (cited award, p.25 #114-115).

2. EDPs and Dossier of Evidence

133. The IP provided the IOC with specific EDPs and a Dossier of Evidence for each individual athlete that was subject to disciplinary proceedings. These documents were forwarded to the athletes in question.

(i) Sochi Duchess List (EDP0055)

134. According to Prof. McLaren and Dr Rodchenkov, the Duchess List is a document that was established in advance of the Olympic Winter Games Sochi 2014, which contained the names of athletes who were "protected".

135. The protection of the athletes on this list meant that their urine samples collected in Sochi for doping tests would be exchanged with clean urine, which they had provided in advance for this purpose. The clean urine was stored in a so-called urine bank.

136. The Duchess List was part of the EDP (EDP0055). It was provided to the IOC with the names of the athletes redacted and encoded.

137. Prof. McLaren identified the names corresponding to the codes in the specific EDPs and Dossiers of Evidence provided in connection with each athlete.

138. This list was retrieved from Dr Rodchenkov's hard drives. Prof. McLaren has indicated that pursuant to the agreement he had with the US authorities, he was not entitled to provide access to the electronic data files.

139. However, in the McLaren Reports, Prof. McLaren indicated that the metadata of the electronic file shows that the author of the list was Mr Alexey Velikodniy, a CSP liaison person.

140. The athletes were protected in order to allow them to take a cocktail of products without the risk of testing positive.

141. The cocktail in question was identified as the "Duchess Cocktail", hence the name of the list.

142. The Disciplinary Commission has carefully considered the significance of the Duchess List.

143. For the reasons that it sets out under point G a. (i) below, the Disciplinary Commission considers it as notably reliable evidence of the fact that the athletes on this list were both effectively and knowingly implicated in the scheme.

(ii) Medal by Day List

144. The 'Medal by Day List' is mentioned in the EDPs submitted by Prof. McLaren and in the affidavit provided by Prof. McLaren on 27 October 2017.

145. As such, it has been referred to in the Notification Letter sent by the IOC

146. The effective significance of that list (several different versions exist) has been questioned.

147. The initial contention of the IOC was that this list, on which the Duchess List athletes were also mentioned, served to identify the athletes who were to be additionally protected, in an *ad hoc* manner.

148. The Disciplinary Commission finds that this list may have been no more than a projection of possible medals that Russian athletes could win in the various competitions.

149. It cannot be considered in the same light as the Duchess List, which is clearly described by Dr Rodchenkov and Prof. McLaren as being a list of protected athletes.

150. The Disciplinary Commission concluded there was no evidence to support the IOC's initial contention and the Medals by Day List does not constitute relevant evidence for the purposes of assessing either the general situation, or the individual implication of athletes.

(iii) Sample Swapping and Forensic Scratches and Marks Evidence

151. As part of the investigations conducted by Prof. McLaren, a certain number of sample bottles collected from Russian athletes in Sochi were subjected to examination by a forensic expert in London.

152. This expert first confirmed that, although the seal mechanism was intended to make this impossible, sample bottles could indeed be opened. To achieve that result, the expert used tools corresponding to the ones Dr Rodchenkov had described seeing in Sochi during a visit to the FSB facilities in which he had explained that the clean samples bottles were stored and the opening of the samples took place.

153. Regarding the interpretation of the results, the experts in London classified the various scratches and marks appearing on the bottles into several categories: Type 1 marks (impact marks), Type 2 marks (scratch marks) and sub-categories of Type 2 marks.

154. The conclusion of the forensic expert in London was that a certain number of the bottles he had examined bore scratches and marks which did not correspond to scratches and marks which would be expected on bottles used under normal conditions, *i.e.* closed in the regular manner and not reopened.

155. These scratches and marks were consistent with the marks which would be expected if the examined bottles had been opened using a method and tools consistent with the ones the expert had been using.

156. The verification of the fact that the bottles could be opened and, whenever possible, the proof that this actually occurred, is an essential element with regard to the verification of the actual implementation of the scheme described by Dr Rodchenkov.

157. The Disciplinary Commission finds that the work done by the London expert in this regard is important and convincing in the perspective in which it was performed, which was to establish the existence of the scheme in general. In that perspective, it remains completely valid.

158. However, the Disciplinary Commission is aware that the forensic expert performed its task under time pressure, with limited time to observe each bottle. He also did not have the possibility to examine all the bottles.

159. For this reason, it was necessary to conduct a more complete and thorough forensic examination, aimed at providing results regarding all concerned samples, of such nature that they could be used in proceedings against individual athletes.

160. This was the purpose of the more extensive forensic study that the IOC commissioned. This study is addressed below.

161. Whilst the findings of the London expert are still relevant with regard to the proof of the tampering scheme, the Disciplinary Commission will more specifically rely on the findings of the more extensive second forensic study.

(iv) Salt Content Analysis

162. Dr Rodchenkov had indicated to Prof. McLaren that, before swapping urine, he had to make sure that the urine replacing the urine collected in the doping control process had a specific gravity consistent with the specific gravity measured upon collection and indicated on the Doping Control Form ("**DCF**").

163. If and when an adjustment had to be made, it was carried out by the addition of salt or by dilution (see IP Report 2, Chapter 5).

164. Depending on the quantity of salt used, or on the volume of dilution, this adjustment could result in levels of salt in the urine that would be beyond the normal physiological levels.

165. Prof. McLaren made a first verification in this respect in London through verification of the salt levels of the samples he had gathered.

166. The analysis made on behalf of Prof. McLaren indicated a number of samples with levels of salt beyond normal physiological levels. This result was a further confirmation that the *modus operandi* described by Dr Rodchenkov was indeed the one applied.

167. This study performed in London had, however, the same limitations as those mentioned in respect of the forensic examination. It had been performed under time constraints and not on all the samples of athletes possibly implicated.

168. This led the IOC to organise a second more thorough and complete analysis of the salt levels of all samples collected from Russian athletes in Sochi.

169. For the same reasons already mentioned above, and whilst again noting that the observations made in London are very strong evidence, the Disciplinary Commission will more specifically rely on the study performed in Lausanne, which is addressed below.

(v) DNA Analysis

170. DNA analysis was performed as part of the verifications conducted by Prof. McLaren in London.

171. As specified in Prof. McLaren's affidavit dated 27 October 2017, DNA analysis was performed on 16 samples from 12 different athletes, including athletes on the Duchess List and members of the women ice hockey team.

172. This analysis had the purpose of verifying two aspects of Dr Rodchenkov's explanations. In both respects the verification has been positive.

173. Firstly, the explanations of Dr Rodchenkov regarding the creation of a clean urine bank implied that the urine, which would be found in samples after swapping, would be the concerned athlete's own urine. This should normally be the case for the athletes for whom protection had been planned in advance, *i.e.* notably the athletes on the Duchess list.

174. The analysis of all the samples of the athletes on the Duchess List, which were included in the DNA analysis carried out in London, did indeed result in a match.

175. Contrary to what was initially indicated in the Notification Letter (due to a misunderstanding on the part of the IOC with regard to the actual scope of the DNA analysis conducted in London by Prof. McLaren), the samples analysed for DNA did not include the Athlete's samples.

176. However, the Disciplinary Commission finds that the fact that DNA analysis of a representative number of samples of athletes on the Duchess list shows consistent results, is still highly relevant evidence.

177. Secondly, Dr Rodchenkov had also indicated that the members of the women's ice hockey team were not on the Duchess List and that they had been included in the protection scheme at the last moment.

178. For this reason, he suspected that in this case, there might not have been any, or at least enough, of their own clean urine available in the urine bank. Consequently, he had indicated that third-party urine might have been used for substitution purposes.

179. In this case, the DNA analysis of the samples of two members of the women's ice hockey team, conducted as part of the investigations of Prof. McLaren, did indeed show inconsistent results (mixed DNA). Therefore, in this second respect also, the declarations of Dr Rodchenkov proved to be correct.

180. In conclusion, the Disciplinary Commission observes that the DNA analysis conducted in London does provide relevant evidence with regard to the implementation of the scheme and is relevant as such.

(vi) E-mails – Disappearing Positive Methodology (DPM)

181. In certain cases, the evidence provided by Prof. McLaren included e-mails. These are indicative of the fact that the concerned athletes may have been involved in another aspect of the scheme, *i.e.* the so called the Disappearing Positive Methodology.

182. The Disappearing Positive Methodology consisted in the suppression of positive results, which had been obtained in the initial screening analysis.

183. This method did not concern Sochi directly. However, the involvement of an athlete in this context is an indication of the fact that he or she was a protected athlete.

184. The Disciplinary Commission considers that such e-mails may therefore constitute relevant supporting evidence, in the cases in which such evidence is given.

185. The Disciplinary Commission underlines that no e-mail evidence was available in the case of the Athlete Chudinov.

b. Additional evidence obtained by the IOC

(i) Forensic expertise of Professor Christophe Champod

186. As indicated above, a more complete and thorough forensic analysis was performed in Lausanne.

187. For this purpose, the IOC contacted and appointed as an expert a renowned professor of criminology at the University of Lausanne, and a marks specialist, Prof. Christophe Champod.

188. Prof. Champod produced a general report on the methodology he used as well as specific reports regarding his findings in relation with each bottle examined. He was heard by the Disciplinary Commission, during the hearing held on 13 November 2017.

189. Not surprisingly, there exists no standard methodology to determine whether bottles containing urine for doping analysis bear marks indicating surreptitious opening.

190. The process followed by Prof. Champod first required him to establish a methodology and then to implement it on the bottles of interest and on a certain number of control bottles.

191. As the London expert had done, Prof. Champod began by establishing that it was indeed possible to open a sample bottle using tools corresponding to the ones described in the McLaren Report.

192. It took Prof. Champod two months to determine how the Berlinger bottles could be opened and closed again and with what tools. Prof. Champod indicated to the Disciplinary Commission that he tried several methods and tools, until he was satisfied that he had established an appropriate and efficient way to open the bottles.

193. On a methodological level, the Disciplinary Commission observed that, as the London expert before him had done, Prof. Champod established that it was possible to open the bottles.

194. He had achieved this using tools which corresponded to the observations reported by Dr Rodchenkov.

195. The Disciplinary Commission is convinced that the method and tools used by the Russian operators to open the bottles cannot be very different from the method and tools eventually retained by Prof. Champod for his expertise.

196. Regarding the examination of the samples, the Disciplinary Commission understands that it was a very delicate and work-intensive task, which Prof. Champod carried out with particular care and expertise.

197. The sample bottles Prof. Champod was asked to examine were 232 samples bottles (B-Sample bottles) collected from the Russian athletes in Sochi. 32 additional control samples were included in the examination.

198. Since, as explained by Prof. Champod, several hours are needed to fully examine one sample, the examination of all the bottles required over three months of intense work by a team of operators, who had to be specially appointed and trained for this purpose.

199. The examination of the bottles started in the second part of August 2017 and the results of a first batch of 50 bottles (including 10 controls) were delivered in September 2017. The results of further batches were subsequently delivered. The examination of all the samples is planned to be completed after the end of the year.

200. On the date of the hearing in the present case, the results of the examination of 127 bottles had been provided. The bottles examined included the sample bottles that had been collected from the Athlete Chudinov.

201. In order to come to reliable conclusions, Prof. Champod had to establish, in a first phase, a classification of the marks he found on the bottles he had received for testing, defining the marks which could be consistent with marks left during the manufacturing process ("F-marks": "Fabrication marks") and the normal use of the bottles ("U-marks": Use marks). Then, Prof. Champod could move to the analysis of the bottles submitted to him to determine the scratches and marks which could be consistent with marks left by the opening of the bottles with tools of the kind he had determined to be appropriate to open the bottles ("T-marks": "Tool marks").

202. Regarding the interpretation of the results, Prof. Champod explained to the Disciplinary Commission that, in order to describe the results, he had classified the various marks and scratches that he observed into three categories, as follows:

- "**Multiple T Marks**": T-marks observed in multiple positions. Results consistent with the use of tools to open the bottles. They provide very strong support for the alleged tampering.
- "**One or more Isolated T Marks**": T-Mark(s) never observed on a bottle used normally. However, given their number and position on the bottles, no strong inference can be drawn: results inconclusive.
- "**No T Mark**": In this case, no mark consistent with opening with tools could be found on the bottle. This would provide support for the proposition that the bottle had not been opened with the method and tools described.

203. As of the date of the hearing, the results already reported on 127 samples were the following:

- 25 samples with Multiple T Marks;
- 18 samples with One or more Isolated T Marks; and
- 84 samples with no T Marks.

204. The Disciplinary Commission has been impressed by the quality of the work carried out by Prof. Champod and his team, and by his approach to the task submitted to him. Prof. Champod appeared to be very knowledgeable and very cautious at the same time. When not sure, he never hesitated to admit that he had no certainty. This gave a lot of credibility to the positions of which he claimed to be certain.

205. Regarding the interpretation of the results and in particular of the absence of *T* Marks, Prof. Champod confirmed that in this case there was indeed more support for a non-opening of the bottle. However, Prof. Champod also noted that he had observed from his own experience that the more skilled he and his team became, after opening a number of bottles, the marks left became fewer and lighter. It was therefore conceivable for him that, with a good training, an operator would be able to open bottles without leaving marks.

206. The Disciplinary Commission observes that this prudent statement left open the possibility that samples without *T* Marks and *a fortiori*, samples with only one or more isolated *T* Marks may have been opened.

207. In accordance with the explanations of Dr Rodchenkov and the McLaren Report, the Disciplinary Commission notes that the method, which allowed samples to be swapped has been in place in Russia since at least February 2013. It was tested at the Universiade in Kazan in July 2013 and at the IAAF Moscow World Championships in August 2013. This gave the operators plenty of time to train and improve their skills prior to the Olympic Winter Games Sochi 2014.

208. The Disciplinary Commission further notes that most athletes gave several samples. In these situations, there were occurrences of samples from the same athlete being found, for at least one sample, with Multiple *T* Marks, attesting tampering, while for other sample(s), No *T* marks and/or only one or more isolated *T* Marks were found. If an athlete is to be protected effectively, all of his or her samples would have to be swapped, otherwise the protection is pointless. If one concludes, based on the entirety of the evidence, that when an athlete was protected, his samples were swapped, this allows or at least reinforces the logical inference that samples with No *T* marks, or only one or more isolated *T* Marks, may also have been opened.

209. This conclusion is indeed positively confirmed by evidence arising from the salt analysis carried out by Prof. Burnier (see below). Such analysis has indeed established abnormally high level of salt in samples in respect to which the examination of Prof. Champod established no *T* Marks or only one or more isolated *T* Marks.

210. This allows an inference that the Russian operators using techniques and tools that they had infinitely more time to improve and practice, were capable of opening sample bottles without leaving characteristic marks or, and *a fortiori*, only isolated marks.

211. On this basis, the Disciplinary Commission thus comes to the conclusion that the expertise provided by Prof. Champod supports the following findings:

- It confirms with a high level of certainty that a significant number of samples were surreptitiously opened in a modus operandi that corresponds to the explanation provided by Dr Rodchenkov. This reinforces the finding that the scheme described in his statement was indeed put in place and implemented as he described.

- With regard to the samples of individual athletes, it confirms with a high level of certainty that for the samples found with multiple T Marks, such marks are direct and objective evidence that the samples concerned were tampered with.

- Regarding samples, which were not found with T marks or only with isolated T-Marks, no firm conclusion can be drawn. However, other available evidence effectively establishes that samples could be opened without leaving marks or only single T-Marks. Prof. Champod confirmed that this was possible.

212. In conclusion, the Disciplinary Commission feels comfortable relying on the results of Prof. Champod's expertise demonstrating the possibility of tampering with the samples, and the fact that several bottles were indeed opened.

(ii) Medical report of Professor Michel Burnier (salt levels)

213. As mentioned above, the IOC commissioned a complete and thorough medical expertise with regard to salt content of all the samples collected from the Russian athletes.

214. This expertise was performed by Prof. Michel Burnier of Lausanne University Hospital.

215. Prof. Burnier first established an adequate and specific reference population based on the measurements made on the samples collected on the occasion of the Olympic Winter Games Vancouver 2010. The values thus obtained were then compared with the values of all the samples collected from Russian athletes in Sochi (A-Samples).

216. The comparison resulted in the identification of 13 clear outliers in the case of Sochi (5 Men and 8 Women).

217. These outliers were samples with abnormally high levels of salt (more than 3 standard deviations above the mean Vancouver value).

218. In his report dated 7 October 2017, Prof. Burnier describes the corresponding results as being "*definitively out of range and even out of renal physiological possibilities suggesting strongly a manipulation of the samples for example an addition of sodium chloride (NaCl).*"

219. As mentioned above, the report of Prof. Burnier is based on values found in the A-Samples.

220. In each case, in which the report of Prof Burnier had identified an outlier, the IOC had a verification of the values performed in the corresponding B-Samples, which could finally be opened, as the forensic examination had been performed and recorded.

221. The results found in the B-Samples were in each case consistent.

222. The Disciplinary Commission considers the findings of the reports and the results obtained on the samples to be important in several respects:

- The findings of multiple outliers are a further objective and direct confirmation that samples were indeed manipulated in Sochi on a large scale. These findings also correspond to the *modus operandi* described by Dr Rodchenkov, including the fact the urine substituted in both the A and B-samples was adjusted for specific gravity to the extent needed and when upward, by the addition of salt. In this respect, the Disciplinary Commission notes that the analysis of the salt level of the samples would indeed not have been performed if Dr Rodchenkov had not mentioned that the specific gravity had been so adjusted.

- As regards individual athletes, a salt level finding above the normal range is clear and objective evidence of a manipulation of the samples in question. Conversely, it is important to note that a salt level not identified as abnormal, does not constitute a proof of absence of tampering. First, Prof. Burnier did not take into consideration low values. This means that all downward adjustments cannot be identified in his study as a matter of principle. Furthermore, adjustments may not have been needed in all cases, or only needed to a point that would not result in an outlier.

- Finally, the salt results are also important with respect to the interpretation of the results of the forensic study. Indeed, and as already mentioned, the fact that samples bearing no marks or only one or more isolated *T* Marks were found with abnormal salt levels demonstrates that samples could be opened without leaving marks or, in any event, multiple *T* marks.

223. In conclusion, the Disciplinary Commission found that the expert report of Prof. Burnier provided key evidence on which the Disciplinary Commission could rely, as indicated above.

(iii) Dr Grigory Rodchenkov's Affidavit

224. As already mentioned, the mission of Prof. McLaren was notably to verify whether the statements made by Dr Rodchenkov about the existence of a system of manipulation of the doping controls in Russia were correct and reliable. This verification was essential, as the explanations provided by Dr Rodchenkov are, of course, of major significance.

225. Prof. McLaren conducted three long interviews with Dr Rodchenkov and he was able to cross-check the various declarations of the former director of the Moscow Laboratory and the Sochi Laboratory with other elements he had obtained.

226. Prof. McLaren is therefore the best placed person to make an assessment of the reliability of what Dr Rodchenkov had reported.

227. Prof. McLaren came to the clear conclusion that Dr Rodchenkov was a "truthful witness". Indeed, he made that finding one of his key findings (IP Report 1, p.86).

228. Prof. McLaren explained this as follows (IP Report 1, p.21):

"I have concluded that Dr Rodchenkov is a credible and truthful witness in relaying to me the testimony he gave which is the subject matter of this Report. I am aware that there are allegations against him made by various persons and institutional representatives. While that might impinge on his credibility in a broader context, I do not find that does so in respect of this Report. I reach that conclusion because the forensic and laboratory scientific evidence that I have gathered corroborates that he has been completely truthful in his interviews with me. Therefore, I did not hesitate in coming to the conclusion that within the subject matter that was my mandate he is a credible and truthful person."

229. The Disciplinary Commission made its own assessment of the credibility of the declarations of Dr Rodchenkov, especially of the affidavits he eventually agreed to provide for the purpose of these proceedings.

230. After reviewing all aspects of the case and all elements available, the Disciplinary Commission was convinced that Dr Rodchenkov was telling the truth, for a large number of reasons, not limited to the following ones:

- Dr Rodchenkov was the main actor in the system and he is the best placed person to explain what it was.

- Dr Rodchenkov is no longer in Russia and he is protected. Therefore, he is now free to speak without fearing dire consequences. The fact that the explanations that he gave to the Independent Commission, whilst still acting as Moscow Laboratory Director, in respect of mass destruction of samples on the eve of a WADA visit, were not found credible by the Independent Commission and the fact that the IC found him at that time to be a "guarded" witness is neither surprising, nor relevant. It does not put in question the credibility of the explanations he provided later, when free to speak. Dr Rodchenkov subsequently confirmed that the destruction of the samples was indeed intended to cover-up falsely reported samples, which is indeed the only credible explanation.

- His statements are very precise and very clear. They are also very consistent and there are no contradictions between the various elements he describes.

- He provides detailed information related to athletes only when he appears to have specific information. In many cases, he just mentions the presence on the Duchess List and the objective consequences thereof, without seeking to add specific details. In one case, the information he provided was decisive for the purposes of clearing an athlete against whom proceedings had been opened as a consequence of her being mentioned on the Medal by Day List. This shows that the allegation that Dr Rodchenkov would simply invent stories against athletes has no basis. On the contrary, the clearly differentiated content of the explanations he provided supports the reliability of their content.

- Every time other evidence has been available, the information provided by Dr Rodchenkov has been systematically corroborated by such evidence. Thus, for example, his explanations regarding the surreptitious opening of the bottles and urine substitution is confirmed by the presence of indicative marks found first by the London forensic experts appointed by Prof. McLaren then confirmed by the more extensive and thorough examination conducted by Prof. Champod in Lausanne, with a specifically high proportion of marked bottles in the case of athletes on the Duchess List. The same is true for his description of the adjustment of specific gravity though addition of salt or dilution. Both an expert appointed by Prof. McLaren, and Prof. Burnier appointed by the IOC, confirmed the presence of abnormal levels of salt, corroborating the explanations of Dr Rodchenkov.

- Even his explanations regarding the clean urine bank were supported by additional evidence. The IC Report mentioned that it was established that the Moscow Laboratory was analysing urine stored in unconventional containers and not reporting the results (IC Report 1, p. 206). At that time, the purpose of such covert analysis could not be fully understood. It is now apparent that it corresponded to the verification of the urine intended for the urine bank described by Dr Rodchenkov.

- The explanation given in connection with athletes whose samples were swapped, although they were not on the Duchess List in Sochi, also proved to be correct. In this case, no clean urine bank could be prepared or not in sufficient quantity. Therefore, the urine could come from other sources. The fact that mixed urine was found in the samples of precisely the athletes in relation to which Dr Rodchenkov had predicted this could be possibly the case is an additional verification of his explanations.

- Dr Rodchenkov kept a regular diary, including when he was head of the laboratories in Moscow and Sochi. The facts he has reported often have a corresponding entry in his diary, relevant handwritten pages of which he attached to his affidavits. This also explains why he has always been able to be so precise regarding dates and telephone calls, for example. These pages were written during a period in which Dr Rodchenkov could not anticipate what would happen later. The Disciplinary Commission does not consider it at all likely that these pages were newly re-written or that, at the time, Dr Rodchenkov misrepresented the reality in his own diary. These entries may therefore be considered as a significant evidential element.

231. In conclusion, the more closely the Disciplinary Commission considered the evidence on file, the more it found that all the other elements, which were available, corroborated Dr Rodchenkov's statements.

232. Therefore, the Disciplinary Commission has come to the conclusion that, whatever his motivation may be and whichever wrongdoing he may have committed in the past, Dr Rodchenkov was telling the truth when he provided explanations of the cover-up scheme that he managed.

233. This notably applies to the explanations he provided in respect of the so-called Duchess List, which was one of the essential pillars of the cover-up scheme.

234. The Disciplinary Commission, like the parties, would have preferred to be able to hear Dr Rodchenkov in person.

235. However, this does not alter its conviction that Dr Rodchenkov is a truthful witness and that his statements reflect the reality and can be used as valid evidence.

E. EVIDENCE SUBMITTED BY THE ATHLETE

236. In support of his written submissions, the Athlete provided five press articles/releases.

237. At the hearing on 13 November 2017, Mr Bushin, and Mrs Burova, forensic experts, members of the Russian Federal Centre of Forensic Science, were heard with respect to the issues linked with the significance of the results obtained from the forensic examination of the sample bottles and with the methodology used by Prof. Christophe Champod when conducting his examinations.

238. The Disciplinary Commission considered the above evidence and addressed its relevance in the course of the assessment below and notably when reviewing the arguments raised by the Athlete on this basis.

F. ADMISSIBILITY OF THE EVIDENCE – DUE PROCESS

239. The Athlete's counsels have strongly challenged the conduct of the proceedings.

240. Objections were notably raised with regard to the admissibility of the affidavits of Dr Rodchenkov both dated 5 November 2017 but provided on 8 November 2017. The admissibility of a complement affidavit of Prof. McLaren provided on the same day was also challenged.

241. These objections were made both on the basis of having insufficient time to examine the affidavits and because Dr Rodchenkov and Prof. McLaren were not available for cross-examination.

242. They were also related to the fact that this evidence was provided late in the context of proceedings, which had been initiated months earlier and had subsequently been suddenly rushed. The Athlete would not have been provided evidence, which would have been readily available much earlier.

243. As an example thereof, the Athlete notably mentioned the fact that the Methodology Report issued 27 July 2017 would not have been provided before 1 November 2017.

244. The Disciplinary Commission observes that the proceedings were indeed conducted under some time constraints.

245. The beginning of the winter season and the XIII Olympic Winter Games PyeongChang 2018 were approaching. In this context, there was an obvious need to rapidly proceed to the resolution of the matters. There was a very high expectation, notably amongst athletes, that this had to be the case in advance of the next edition of the Olympic Games and also of the season leading up to them.

246. As regards the overall duration of the proceedings, which were initiated in December 2016, the Disciplinary Commission notes that the Athlete was immediately informed that the IOC would first have to conduct additional investigations.

247. The duration of such investigations has been critically impacted by the time necessary to establish the methodology and then the implementation of the forensic analysis of the samples.

248. The results of this study were an essential element of the investigations.

249. According to the explanations of the IOC, steps towards the organisation of an appropriate forensic study of the sample bottles were undertaken from the beginning of 2017. The formal agreement with the University of Lausanne was executed on 10 March 2017. Given the novelty and the complexity of the mission, the Disciplinary Commission considers that to be reasonably diligent.

250. Once appointed, Prof. Champod and his team took several months to confirm that the samples could be opened and to establish a proper methodology with regard to examination and categorization of marks.

251. This was achieved by the end of July and documented in the Methodology Report issued on 27 July 2017.

252. At this stage, no examination had been performed on any individual sample yet.

253. In this context, the Disciplinary Commission does not find that the Methodology Report should have been provided immediately to the athletes. It appears reasonable to have provided it in support and complement of the specific reports related to each specific examination of the samples.

254. The implementation on 232 B-sample bottles of interest and 32 control bottles has been a considerable and time consuming operation.

255. The bottles were divided in 6 batches of approximately 50 samples each. It takes several hours to examine one bottle and the examination of a single batch requires a minimum of 2 weeks or more.

256. After the examination teams had received a training, the effective examination began in late August. The results of the examination of the first two batches were then only available during the second part of September 2017. The process will not be completed until the beginning of 2018.

257. The Disciplinary Commission has also been made aware that, until the forensic examination is completed on a bottle, the sample contained therein cannot be used for any other analysis. The forensic study has to be conducted prior to the opening, which breaks the sealed bottle cap. Thus, for example, salt level analysis and DNA analysis cannot be performed on any B-Sample prior to its forensic examination. The bottle forensic examination has therefore been crucial for any further progress in the investigations.

258. The Disciplinary Commission noted that the explanations regarding the process of the forensic study and its length were confirmed by Prof. Champod.

259. The above reasons explain why the proceedings had to be paused until this autumn. They were then restarted as soon as sufficient results from the forensic study began to be received.

260. The notice of the hearing as well as the elements of evidence then available, including the evidence provided by Prof. McLaren, the results of the forensic examination of his samples (including the Methodology Report in support thereto) and the expertise of Prof. Burnier on the salt levels were thus provided to the Athlete through the ROC on 19 October 2017.

261. The Disciplinary Commission observed that the allegation according to which the IOC waited until 1 November 2017 is incorrect. This is the date on which the file was provided again to the Athletes' counsels, after they had submitted on the same day a corresponding Power of attorney.

262. After this initial relaunch, the proceedings moved ahead speedily taking into account the constraints arising from the approaching sport season, already mentioned above.

263. This addresses the general conduct of the proceedings.

264. As regards the affidavit of Dr Rodchenkov, the Disciplinary Commission considered the following explanations provided by the IOC.

265. In view of the circumstances, Dr Rodchenkov is presently living under a protection program in the United States of America (USA). Access to him is controlled and subject to severe restrictions.

266. Until very shortly before the hearing, the IOC had been informed that it would not be possible to have direct access to Dr Rodchenkov for the purpose of the Disciplinary Commission proceedings, in any manner or form.

267. Following indications published in the media that Dr Rodchenkov would nevertheless be available to provide evidence, a direct contact could finally be established with his American counsel.

268. Because of the constraints linked to the conditions imposed on any intervention of Dr Rodchenkov on the one hand, and the already mentioned time constraints requiring a resolution of the matters without further delay, the only practicable solution at that stage of the proceedings was the provision of written affidavits.

269. A first affidavit could only be obtained on 27 October 2017. This first affidavit included specific parts concerning individual athletes. In the case of this first affidavit, there were the athletes, whose cases were heard on 30 October 2017.

270. Subsequently, further affidavits were successively obtained, each time with specific parts covering the different athletes concerned.

271. In addition to an affidavit dated 5 November 2017, addressing general circumstances, Dr Rodchenkov also produced a separate affidavit concerning the Athlete only. After the redaction of the names, it was forwarded to the Athlete on 8 November 2017.

272. The Disciplinary Commission observes that this is the first time that direct testimony of Dr Rodchenkov could be obtained at all in proceedings concerning the situation in Russia. This is a positive element even if it occurred late in the proceedings.

273. The Disciplinary Commission also notes that the content of the affidavit of Dr Rodchenkov does not come as a surprise. Apart from the specific elements concerning the Athlete, what it describes was already set out in the reports of Prof. McLaren and in the EDPs.

274. As regards the fact that the affidavit is only in writing and Dr Rodchenkov could not be heard in person, the Disciplinary Commission was plainly conscious and has already mentioned that it would have been preferable to have Dr Rodchenkov present in the hearing, as well as in all other hearings concerning cases linked with Sochi.

275. The Disciplinary Commission underlines however that the proceedings are of a civil law nature and are governed by the IOC Anti-Doping Rules. These define the evidence admissible in these proceedings.

276. Pursuant to art. 6.2.9 of the IOC Anti-Doping Rules, the Athlete may adduce evidence, provided such does not require the use of disproportionate means. Art. 6.2.9 of the IOC Anti-Doping Rules further specifies that such evidence may be in writing.

277. It follows from the above that (i) the practicability of the proof is relevant and (ii) written evidence is considered as relevant evidence under the applicable rules.

278. The Disciplinary Commission considers that the same considerations apply to the evidence that it can itself decide to seek or obtain pursuant to Art. 6.2.10 of the IOC Anti-Doping Rules.

279. The Disciplinary Commission accordingly decided that the affidavit of Dr Rodchenkov could be admitted as written evidence in these proceedings. In the present circumstances, it is the only practicable manner under which this important evidence could be provided.

280. The Disciplinary Commission has given the evidence appropriate weight, taking into account the fact that Dr Rodchenkov could not be heard and subject to questioning at the hearing.

281. Regarding the affidavit of Prof. McLaren, the Disciplinary Commission remarks that the content of this affidavit is only a clarification of certain aspects, which are already covered by the reports or the EDP.

282. In terms of practicability, Prof. McLaren cannot be expected to be available for each of the hundreds of disciplinary proceedings that are likely to take place, arising from the circumstances uncovered in his reports, particularly as this would essentially only be to confirm the content of his reports and written statements.

283. To conclude on that point, the Disciplinary Commission considers that, under the given circumstances, the principle of due process was not violated by the admission of this evidence and that the Athlete could still validly defend his case.

G. ASSESSMENTS

a. General Assessments

284. Assessing the available evidence, the Disciplinary Commission will first set out the conclusions such assessment allows with regard to the existence of a cover-up scheme and then what such assessment allows the Disciplinary Commission to conclude in respect of the implication of the athletes, in general.

285. The circumstances specific to the Athlete Chudinov will subsequently be addressed in light of these first findings.

1. The existence of the scheme

286. The Disciplinary Commission first confirms that it is more than comfortably satisfied that the evidence establishes that a scheme of sample-swapping as described in the McLaren Report and the affidavit of Dr Rodchenkov was indeed in place and implemented in Sochi.

287. The Disciplinary Commission shares the conclusions reached by Prof. McLaren in this respect.

288. Its findings are not only based on the evidence provided by Dr Rodchenkov in his interviews, but on a wealth of other corroborating evidence, including other witnesses, the forensic examination of the sample bottles, the evidence showing abnormal salt results and the additional elements coming from DNA analysis.

289. The corroborating evidence considered by Prof. McLaren included further objective elements, such as e-mails confirming that athletes were protected through different methods.

290. In this respect, the Disciplinary Commission underlines that the findings of Prof. McLaren with regard to the existence of the doping scheme must be considered in their totality.

291. They do not only concern what happened in Sochi but demonstrate the existence of an evolving system, which, through different methods, over a number of years, pursued the clear objective of shielding Russian athletes from effective doping control.

292. The Reports of Prof. McLaren describe and establish how this system evolved and developed responses aimed at achieving that goal depending on the circumstances.

293. The swapping scheme applied in Sochi was the solution logically adapted to the particular circumstances in Sochi, notably the fact that the presence of international experts was an obstacle to the application of the Disappearing Positive Methodology.

294. The Disciplinary Commission notes that a correct evaluation of the available evidence requires it to be placed in a global perspective. To return to an image already used, the various elements established in the report are like pieces of a puzzle. Considered in isolation, it may be not clear what they represent. However, put together, they have a clear meaning.

295. In this case, all the pieces provided by Prof. McLaren fit with each other to confirm the doping scheme applied, *inter alia*, in Sochi.

296. The additional investigations conducted by the IOC further sharpen and confirm the findings of Prof. McLaren.

297. The overall results of the forensic examination and of the salt analysis, which Prof. Champod and Burnier performed on all samples provide confirmation that samples have indeed been manipulated on a large scale and through the *modus operandi* described by Dr Rodchenkov and set out in the McLaren Report.

298. The Disciplinary Commission underlines that the necessity to place the evaluation of the evidence in context also applies with respect to the results of these two studies.

299. Their purpose was indeed not limited to establishing whether a given sample bottle was opened. They constitute also and above all a verification of whether a specific group of sample bottles had been subject to the described scenario of tampering.

300. The two studies do bring evidence consistent with the scenario described, (*i.e.* marks and abnormal salt levels) in connection with a significantly high number of samples to which, according to Dr Rodchenkov, the tampering scheme had been applied.

301. These overall results are as such a very powerful confirmation that the described scenario did effectively occur and is the effective cause of results established by the studies.

302. The sole support for an alternative cause of these results is the fact that the conclusions of the experts (correctly) do not completely exclude the possibility that another cause might be the origin of an individual result considered in isolation.

303. When however the overall results of the two studies are considered, it becomes obvious that the only possible explanation of these overall results is that the samples were subject to the manipulation described. Alternative causes, which are in any case not described or made plausible to any degree by the Athlete, could never explain the results of either of the two studies in their totality.

304. This conclusion becomes even more inescapable, when the results of the two studies are viewed in combination (samples with marks and high or impossible salt levels).

305. Based on the above, the Disciplinary Commission can only conclude that it is more than comfortably satisfied that samples of urine collected from Russian athletes were tampered with in Sochi in a systematic manner and as part of an organised scheme.

2. Implication of the athletes

306. Regarding the implication of the athletes, the Disciplinary Commission took particular care in assessing to what extent it could be held as having been established that the athletes were part of this conspiracy and were aware of it.

307. The Disciplinary Commission came to the conclusion that it was not possible that the athletes were not fully implicated. They were also the main beneficiaries of the scheme.

308. The system in place was very sophisticated and it was a very fine mechanism where many people had a role to play, including the athletes. If one actor failed, the system would not function. The Disciplinary Commission compares it to a Swiss watch with many small wheels working in common to give the precise time, and if one wheel fails or even one tooth of a wheel is missing, the watch does not work anymore.

309. The athletes were one such wheel, fully involved in the scheme and in all its aspects.

310. The Disciplinary Commission has come to the conclusion that the scheme could not work without the personal implication of the athletes.

311. That is notably the case for the athletes on the Duchess List.

312. For these athletes, the use of the Duchess Cocktail was part of the scheme.

313. Dr Rodchenkov has explained that the manner in which the Duchess Cocktail had to be used was specific and unusual ("mouth wash"). It would have been impossible for an athlete not to understand that the aim was not a legitimate one.

314. It is not conceivable that, when offered use of the Duchess Cocktail and being aware of the consequences of using Prohibited Substances, the athletes were not informed at the same time that measures would be taken to shield them from doping controls.

315. The athletes had to provide their own urine to be stored in the urine bank. The provision of clean urine requires the athlete's cooperation.

316. The explanation that clean urine could have been provided unknowingly in the course of regular doping controls or medical examination is not credible.

317. The Disciplinary Commission observes that the build-up of the clean urine bank though provision of urine in unconventional containers, which were checked by the laboratory appears to be confirmed by an observation already reported in the first IC Report, which mentions the fact that the Moscow Laboratory was indeed covertly analysing urine stored in non-regular containers (IC Report I, p.206). At the time of the IC Report, the potential significance and purpose of this irregular analysis could however not be fully understood.

318. The participation of the athletes was also required to identify the number of the samples upon collection and to relay it to a specific person who was part of the plot, in order to be sure that they could be identified for swapping purposes when received in the laboratory.

319. As part of his evidence related to specific athletes, Dr Rodchenkov provided detailed indications relating notably to the provision of urine samples for the clean urine bank by certain athletes. He also provides indications relating to the use of the Duchess Cocktail and the way the athletes would react to it. These indications confirm that the athletes concerned could not have been ignorant as to what they were doing.

320. Finally and more generally, the very purpose of the scheme put in place in Sochi was to allow athletes to dope without fear of a positive doping test.

321. This purpose cannot be achieved and the scheme would be senseless if the athletes are not made aware that they are protected. Indeed, if they were not made aware, they could not take advantage of their protection.

322. Therefore, the athletes must have been aware that they were protected.

323. This was necessarily true for the athletes who were on the Duchess List. They were at the core of the organised scheme.

324. It is however also true for the athletes protected on an *ad hoc* basis. These athletes received what could be called "doping wild cards". To play them, they had to be aware that they could do so safely. The athletes involved must therefore have been aware of their own doping and of the fact that it would be covered up.

325. When the Disciplinary Commission considered together the various elements that were indispensable to make the system work, it could only come to the conclusion that the athletes who were implicated in the scheme were personally involved in and aware of it.

326. This finding of the Disciplinary Commission with respect to the athletes also corresponds to the most probable course of events.

327. The Disciplinary Commission has tried to imagine whether a course of events where the athletes were not personally implicated and/or aware of the scheme, would have been possible.

328. Such a scenario would imply that athletes would have been protected without being informed and this would have occurred also with regard to clean athletes.

329. Clean athletes do not need any protection and the swapping of samples of clean athletes would have been completely unreasonable.

330. Such a scenario is so improbable that the Disciplinary Commission deems it impossible.

331. Continuing its evaluation, the Disciplinary Commission can only see one reason to substitute the urine collected in a doping control with clean urine: to avoid a positive doping test.

332. This, in turn, implies that the original substituted urine is likely to have contained a Prohibited Substance(s).

333. On this basis, it can be inferred that the athletes who benefitted from the substitution were actually using Prohibited Substances.

334. This is consistent with Dr Rodchenkov's indication that the athletes on the Duchess List were offered the Duchess Cocktail.

335. The consequence thereof will be addressed below when considering which anti-doping rule violations may be at stake.

3. Findings regarding existence of the scheme and implications of the athletes

336. Summarizing the conclusions that it has reached after assessing the evidence available with regard to the two general issues mentioned at the beginning of this section, the Disciplinary Commission first confirms that it finds as established beyond any doubt, which also means to its comfortable satisfaction, that the cover-up scheme, which has been described in the McLaren Report based on the explanations of Dr Rodchenkov, was indeed implemented in Sochi.

337. Regarding the implication of the athletes, and without reference to the Athlete Chudinov in particular, the Disciplinary Commission considered which of the following two propositions was the most probable (and subsequently considered whether it was comfortably satisfied that the most probable did occur):

a) The athletes were implicated in the above scheme, either from the start or ad hoc, and they were aware thereof and participated therein;
b) The scheme has been implemented, without the athletes knowing, nor participating.

338. With reference to the explanations provided above, the Disciplinary Commission considers that the first proposition is consistent with all the available evidence.

339. Conversely, there is no evidence supporting the second proposition and such a scenario would not only be inconsistent with the normal course of events but it would simply not make any sense. Such a proposition would imply that a complex, refined and risky scheme would have been implemented to protect athletes from effective doping control, when the athletes concerned would not need any such protection, nor be in position to take advantage of the scheme (since they would not even know that they could safely dope).

340. The Athlete has sought to challenge each individual piece of evidence, but when all pieces match and comfort each other, no doubt is possible.

341. On this basis, the Disciplinary Commission observes that it can comfortably choose the first proposition and reach the conclusion that the athletes were active participants in and/or knowing beneficiaries of, the scheme, which could not have worked without them. This when there exists objective evidence of tampering of their samples or other evidence of their implication, including in particular, their presence on the Duchess List.

b. Specific findings regarding the Athlete Chudinov

342. Turning to the specific case of the Athlete, the Disciplinary Commission finds that the participation of the Athlete in the doping scheme is established to its comfortable satisfaction for the reasons set out above and, more specifically, for the following reasons.

343. First, the Athlete is one of the athletes listed on the Duchess List. For the reasons explained above, the Disciplinary Commission already draws a decisive inference from this element alone.

344. The athletes on this list participated in a very sophisticated scheme. Their protection was prepared and planned in order to be ready and effective when it needed to be, *i.e.* during the Olympic Games.

345. The Disciplinary Commission underlines that the fact that a significant portion of the athletes on the Duchess List were effectively found with samples bearing conclusive multiple T-Marks and/or abnormal salt levels is effectively corroborating the fact that this list did effectively determine athletes who were effectively protected and were in need of that protection.

346. As the Disciplinary Commission already noted above (Section D b. (i) #207), the fact that no T-Marks were found on the sample bottles of the Athlete does not undermine the conclusion that they too were included in the swapping scheme.

347. Indeed, the number and indeed the presence of T marks may depend on the skills of the operators. As noted by Prof. Champod, skills in opening the bottles, his own and the ones of other members of his team, have been rapidly increasing. This resulted in fewer and lighter marks as the work progressed.

348. This progression already occurred in connection with the relatively low number of bottles, which Prof. Champod and his team actually opened (21 in all).

349. The Russian operators had at least one year to train and improve their expertise (see above Section D b. (i) #207). During that time, they could open a high number of bottles. Accordingly, the Disciplinary Commission has no difficulty to infer that they could reach a level of skills allowing them to open bottles with very few or, indeed, no marks at all.

350. This conclusion is comforted by the fact that that bottles containing abnormal salt levels were found with only Isolated T-Marks or no T-Mark at all. Salt could however not be added to urine without opening the concerned bottles.

351. The Disciplinary Commission comes therefore to the conclusion that the result of the forensic study does not contradict the conclusion reached with regard to the participation of the Athlete.

352. As regards the absence of abnormal levels of salt in the samples of the Athlete, the Disciplinary Commission observes that this does not exclude the possibility that said samples have been tampered with.

353. As already explained under #222 above, an adjustment of the specific gravity of the urine (especially of the same person) is not always necessary. If needed, the adjustment may have been effected only to an extent that would not lead to an abnormal salt level. Finally, downward adjustments were not identified in the study of Prof. Burnier.

354. The DC notes in this respect that a large number of samples bearing Multiple T-Marks were not found with abnormal salt level. This demonstrates that samples could be tampered without the necessity to alter their salt level in an identifiable manner.

355. Therefore, the fact that the levels of salt of the samples of the Athlete are not abnormal does not undermine the conclusions of the DC.

356. Based on the above elements, the Disciplinary Commission concludes that it is comfortably satisfied that the Athlete was a participant in, and a beneficiary of, the cover up scheme implemented on the occasion of the Olympic Winter Games Sochi 2014.

H. ARGUMENTS SUBMITTED BY THE ATHLETE

357. A number of arguments were submitted by the Athlete in his written submissions and during the hearing. They will be addressed below.

358. Some of these arguments have already been directly or implicitly addressed in previous parts of this decision and the Disciplinary Commission will try to avoid unnecessary repetitions.

a. Collective Justice

359. The Athlete, like all the athletes concerned, has heavily insisted on the fact that an individual anti-doping rule violation ("**ADRV**") against him had to be established and that it was not sufficient to allege a conspiracy, as otherwise the Disciplinary Commission would be exercising indiscriminate collective justice, which it had been stated it would not do.

360. The Athlete refers in this respect to an interview of the Chairman of the Disciplinary Commission.

361. The Disciplinary Commission has already stated above that it would not exercise collective justice.

362. What the Athlete's argument fails to consider is that the violations at stake in these proceedings have the specificity of being constituted by the participation to a scheme, which is much wider than just the part in which the Athlete is personally involved.

363. In such a context, the first and correct step in view of establishing whether a violation has been committed is to verify the existence of the scheme.

364. If this is the case, then the further steps consist in the assessment whether individual athletes, and, in these proceedings specifically the Athlete Chudinov, were implicated.

365. To proceed accordingly is not exercising collective justice but correctly seeking to determine the individual implication of participants in a scheme, which needs logically to be first established as such.

366. This is precisely what the Disciplinary Commission did when performing its assessment of this case (see Section III. G. Assessments).

b. Procedural issues

367. Practically all the procedural issues raised by the Athlete have been already addressed above (see Section III. F. Admissibility of the Evidence – Due Process).

368. The Disciplinary Commission will therefore only address two issues, which were not already specifically discussed.

369. The first one concerns the DNA analysis. The Athlete contends that no DNA analysis was performed on his samples.

370. In this regard, the Disciplinary Commission notes the explanations, which were provided by the IOC.

371. As regards the athletes appearing on the Duchess List, the IOC had initially mistakenly assumed that samples of all athletes on this list had been subject to DNA analysis in London with matching results.

372. The notification letters to the athletes were issued based on this assumption, with a corresponding mention.

373. This was actually only the case for a representative portion of the athletes on this list.

374. In particular, the Athlete's samples have not been subject to a DNA analysis.

375. Whilst it would have been preferable to have a DNA confirmation, the Disciplinary Commission does not consider the lack of DNA confirmation as crucial. Indeed, the DNA analysis performed in London on samples of athletes on the Duchess List, confirmed for all of them that the urine in the bottles was their own urine.

376. The collection of further evidence in respect of DNA would have implied a significant delay in issuing the decision.

377. The Disciplinary Commission notes that, pursuant to art. 6.2.9 of the IOC Anti-Doping Rules, the Disciplinary Commission can reject evidence which would require disproportionate means.

378. In conclusion, the Disciplinary Commission considers that the DNA analysis carried out in London already sufficiently corroborates the reliability of the explanations of Dr Rodchenkov, notably in respect of the fact that the urine of the athletes on the Duchess List was substituted by their own urine.

379. The Disciplinary Commission finally feels that the other elements of evidence available in these proceedings were sufficient to reach a decision without the need of resorting to further evidence with regard to DNA.

380. The Athlete raises further contentions in regard of the EDPs.

381. These contentions refer to the fact that the EDPs have been temporarily not accessible and/or that elements have been added or changed.

382. The Disciplinary Commission has been informed that the EDP site (which is not under the control of the IOC) has indeed been temporarily inaccessible. The Disciplinary Commission fails however to see the concrete relevance of this circumstance in connection with the case of the Athlete.

383. The elements of the EDP relevant in these proceedings have been provided to the Athlete on 19 October 2017. The Athlete does to refer to any concrete elements, which he could not accessed.

384. The same observation applies to the changes and corrections made in the EDP. The Athlete does not mention any such change or correction that would concern his case or have any impact on its assessment.

385. The Disciplinary Commission finally observes that, when so many names, data and numbers must be compiled, coupled with a need for translation, some errors are inevitable. What counts is that the errors, which are relevant, are corrected. As it stands, there no relevant elements to be corrected in connection with this case.

c. Relevance of the McLaren Report

386. The Athlete argues that any reliance on the McLaren Report (and implicitly on any evidence provided by Prof. McLaren) would be misplaced.

387. The Disciplinary Commission has already addressed and clarified this issue (see above Section III. D. a. 1).

388. The Disciplinary Commission confirms its position, which is also the one stated in the Report that (1) it was indeed not the mission of Prof. McLaren to assess individual ADRVs but that (2) the Report and the evidence provided for this purpose by Prof. McLaren are part of the evidence, which the Disciplinary Commission may assess, as it is its function to do, in individual cases within its jurisdiction.

389. The Disciplinary Commission notes that the content of the article relating Prof. McLaren's interview on which the Athlete relies is not in contradiction with the above.

390. This interview was given just after the publication of the first part of the report on 4 August 2016. Already then, the article mentioned the fact that information about some individual athletes had been collected and was provided as a "by-product".

391. As it is clarified in the second part of the Report, the provision to the concerned result management authorities of elements in connection with the identification of the implicated athletes had become one of the specific elements of Prof. McLaren's mission. The EDP site has been established just for this purpose.

392. Prof McLaren has provided substantial evidence for these proceedings and the Disciplinary Commission has consistently considered that it would take it into account.

393. Thus and notably, in an interview cited by the Athlete, the Chairman indicated that the Disciplinary Commission would "*[...] work with Mr McLaren, as he has more material than what was published in the report*".

394. This is precisely what the Disciplinary Commission did.

d. <u>Dr Rodchenkov's testimony</u>

395. The Athlete heavily insists on the fact that Dr Rodchenkov's testimony cannot be held as reliable.

396. The Disciplinary Commission has already explained why it comes to the completely contrary conclusion that, as far as the doping scheme was concerned, it concurred with Prof. McLaren that Dr Rodchenkov could be considered as a reliable witness and had been shown to be such (see Section III. D. b. (iii) above).

397. Given the insistence of the Athlete's attacks, the Disciplinary Commission will add the following.

398. The Athlete refers to the past actions and behaviours of Dr Rodchenkov.

399. In this respect, the Disciplinary Commission wants to be very clear in confirming that considering Dr Rodchenkov as a reliable witness is not in any way an approval of his past actions and his moral character.

400. His actions, while being a director of the Moscow Laboratory, are despicable and inexcusable.

401. This said, in a case of a conspirative scheme, the main evidence is often coming from participants, who accept to stand as witness.

402. The question is therefore whether evidence obtained from such sources should not be taken into account for the reason that the witness in question has a dubious history and character record and is one, and in this case, a main actor of the conspiracy.

403. Particularly in this case, one may understand that many might wish that to be the case. However, there is no objective reason not to use the most direct and relevant evidence, as long as it can be verified that its content is itself truthful and valid.

404. In the case of Dr Rodchenkov, it is worth underlying that, without his testimony, the swapping of samples in *inter alia* Sochi would never have been uncovered.

405. The reality of the scheme has been confirmed in the meantime by objective evidence, which would not even have been investigated for if Dr Rodchenkov had not provided explanations, which justified the corresponding investigations.

406. The verification of the allegations of Dr Rodchenkov was a main focus of Prof McLaren's mission. His conclusions in this respect are unequivocal.

407. When it published Dr Rodchenkov's account in May 2016, the New York Times was indeed correct in stating that it had, at that time, not been verified. This was however no longer the case after the publication of the Report of Prof. McLaren, which constitutes such verification.

408. The finding in the Report that Dr Rodchenkov is a reliable witness is obviously absolutely not in contradiction with the prior different finding of the IC of which Prof. McLaren was a member.

409. The context and accordingly the content of the testimony of Dr Rodchenkov had radically changed in the meantime. As already explained, this made all the difference.

410. Regarding the alleged "striking inconsistencies" that would exist in the testimony, the Disciplinary Commission observes that the example mentioned by the Athlete does not appear to be a contradiction at all.

411. There is indeed no effective contradiction between the mentioning by Prof. McLaren that Dr Rodchenkov would not have known the method used to open the samples and the fact that the second part of the Report indicates that Dr Rodchenkov had seen the tools, which might have been used for that purpose.

412. First, the determination of the level of details mentioned in each of the parts of the Report results from a decision of the writer of the report. Secondly, the description of a tool is not the description of the method. Dr Rodchenkov has remained consistent in indicating that he never actually saw how the bottles were opened.

413. In any event, the Disciplinary Commission does not see any relevant contradiction in the example made by the Athlete.

e. <u>Duchess and Medal by Day Lists</u>

414. The Athlete argues that no reliance can be placed on the Duchess and Medal by Day List.

415. Regarding the latter, the Disciplinary Commission has already expressly indicated above in Section III. D a. 2 (ii) that it would not rely on the Medal by Day list.

416. The Disciplinary Commission addressed the relevance of the Duchess List in Sections III. D a. 2 (i) and III. G. a. 2 above.

417. The Athlete argues that the finding of the forensic analysis would not allow the inference, which the Disciplinary Commission draws from the mere presence on this List.

418. In this respect, the Disciplinary Commission confirms its conclusion already set out above (see Section D b. (i) #208-209) that the presence of only isolated T-marks and/or the absence of marks does not prevent a finding of implication in the swapping scheme based on another element of evidence of implication, such as, in particular, the presence on the Duchess List.

419. In conclusion, the Athlete's arguments do not put into question the assessments of the Disciplinary Commission with regard to the Athlete's participation.

f. Forensic examination

420. The Disciplinary Commission has considered the explanations brought forward by Mr Alexei Bushin and Ms Vera Burova, which were heard as experts in relation with the forensic study.

421. At the hearing, Mr Alexei Bushin and Ms Vera Burova, provided explanations, which suggested that the Methodology Report produced by Prof. Champod and used by his team when performing the examination of the sample bottles, would contain a number of substantial flaws.

422. Firstly, Mr Bushin raised concerns that the bottles used by Prof. Champod when establishing the opening method, were closed only with 6-11 clicks, while the maximum possible closure is 15 clicks.

423. Mr Bushin mentioned having difficulty in determining the exact shape and form of the instruments used in the studies, and the information of the depth to which the instrument was inserted by the experts when trying to open the sample bottles.

424. Secondly, Mr Bushin emphasised that the bottles used by Prof. Champod did not contain any liquid or frozen liquid, which made the task easier for the experts.

425. Thirdly, the categorisation by Prof. Champod of the marks into three groups, although acceptable, lacked any detailed description enabling to identify a difference between these types.

426. Mr Bushin raised the question of the possibility of replication of the method by other researchers. In this context, he noted that the light was adapted to take the pictures and suggested that this might affect the results of the observations.

427. Based on all the above, Ms Bushin raised concerns about the effectiveness of the approach used in the Methodology Report to identify the marks that were definitely left by the instrument in tempering the bottle.

428. In continuation, Ms Burova summarised the statement of her colleague and stated that the proposed by Prof. Champod methodology did not allow to establish whether the cap on the bottle was reopened with a special tool or instrument.

429. In addition, she mentioned inconsistency in the number of the components of the cap mentioned in the Report, which did not correspond to the number of the parts, which could be seen on the pictures.

430. Prof. Champod answered the issues raised by Mr Bushin and Mrs Burova.

431. Regarding the number of clicks made for the studied bottles, Prof. Champod explained during the hearing that with a higher number of clicks (more than 11), it is more difficult to open the bottle, meaning that this will leave more T marks and their identification is less challenging. The focus was to explore what could be the minimum level of marks that may be left in a situation when fewer marks would be left.

432. Prof. Champod stated that the presence of liquid, which could be frozen, would not impact on the marks.

433. The categorisation of the marks derived from three different stages of the sample bottle examination. Initially, a new bottle was examined and each of its faces recorded; then the same was done after the cap had been regularly closed, causing marks corresponding to such regular use. Finally, the bottle was reopened with tools and reclosed prior to a final examination, allowing to establish marks that were specific to the re-opening process.

434. In response to the Mr Bushin's concern with regard to the effect of lighting when making pictures, Prof. Champod stated that inadequate lighting might have led to missing of marks, but not to creating them. Light adjustment was applied to facilitate the observations of existing marks.

435. The Disciplinary Commission observes that it is not clear how the alleged inconsistencies and flaws of the Report would affect the validity of the findings of Prof. Champod made in relation with the examined samples.

436. Neither Mr Alexei Bushin, nor Ms Vera Burova did in particular offer any alternative explanations for the presence of marks consistent with the opening of the bottles with tools of the kind used by Prof. Champod.

437. In conclusion, the Disciplinary Commission finds that the explanations of Mr Bushin and Ms Burova do not contradict to the validity of the results of Prof. Champod's expertise.

I. ANTI-DOPING RULES VIOLATIONS COMMITTED BY THE ATHLETE

a. Applicable Provision

438. In accordance to art. 1.2 of the IOC Anti-Doping Rules, the anti-doping rule violations applicable are the ones set forth in the WADC.

439. At the time of the commission of the alleged violations, the WADC in force was still the 2009 edition.

440. Based on the findings it made, the Disciplinary Commission holds that the Athlete Chudinov has committed the following anti-doping rule violations defined in the 2009 WADC.

b. Tampering (Art. 2.5 of the 2009 WADC or 2.2 of the 2009 WADC & M2)

441. As a preliminary observation, the Disciplinary Commission notes that there is a question whether the factual circumstances of this case should be considered as potential tampering within the meaning of art. 2.5 of the 2009 WADC, or tampering defined as use of a Prohibited Method, which would constitute a violation pursuant to art. 2.2 of the 2009 WADC in combination with the definition of tampering as a Prohibited Method defined as such under M2 of the applicable Prohibited List (2014).

442. In accordance with the comment to 2.5 of the 2009 WADC, tampering pursuant 2.5 of the 2009 WADC is any conduct, which subverts any part of the Doping Control but which does not already fall under the definition of Prohibited Method.

443. The definition of the Prohibited Methods set forth in the Prohibited List under M2 reads as follows:

"Tampering, or attempting to tamper, in order to alter the integrity and validity of Samples collected during Doping Controls is prohibited. These include but are not limited to catheterisation, urine substitution and/or alteration."

444. This definition of tampering as Prohibited Method pursuant to M2 Prohibited List, thus notably relates to alterations of the Integrity and validity of the sample, including specifically urine substitution.

445. The Disciplinary Commission observes that the actions described in the above definition appear to precisely correspond to the main features of the cover-up scheme in question.

446. Indeed, in this case, the subversion of the Doping Control process was achieved by substitution of the urine collected during the test by another urine.

447. This substitution requires the surreptitious opening of the bottle and as such does alter the integrity of the samples.

448. In view thereof and given the comment to 2.5 of the 2009 WADC, the Disciplinary Commission concludes that the circumstances of the present case shall be examined in the perspective of a violation of art. 2.2 of the 2009 WADC in connection with the definition of tampering set forth under M2 Prohibited Method, rather than as a potential violation of art. 2.5 of the 2009 WADC.

449. Given the articulation between the two provisions, art. 2.5 of the 2009 WADC covers in any event a broader concept of tampering and constitutes a *lex generalis*. Therefore, to the extent needed, any action, which would not fall under art. 2.2 of the 2009 WADC would fall under art. 2.5 of the 2009 WADC, with effectively the same consequence.

450. This being clarified, the Disciplinary Commission notes that the established sample-swapping scheme constitutes a subversion of the entire Doping Control process.

451. The surreptitious opening of the bottle and the actual urine substitution form only the final steps in a process, which actually goes well beyond that phase.

452. The tampering action involves all the other necessary elements of the operation, including the provision of urine to be substituted and the provision of information on the samples allowing the samples to be swapped to be identified. The whole process does not even end with the swapping: it also includes the false reporting of results of a sample, which is not the one collected under the number, which identifies it.

453. The entire process thus forms a chain constitutive *in globo* of the conduct relevant as tampering.

454. The Athlete is necessarily a participant in this chain, *a minimo* through provision of the clean urine, as this is a necessary element of urine substitution.

455. The Athlete thus directly takes an active part and therefore commits tampering as much as the person who actually carries out the urine substitution.

456. The Disciplinary Commission notes that pursuant to Art. 2.2 of the 2009 WADC, the commission of the violation does not require intent or negligence, nor even conscious knowledge of the violation.

457. Therefore, it would not even be necessary to demonstrate that the Athlete was a conscious participant in the process and was aware of its subversion purpose to conclude that a violation of tampering pursuant to Art 2.2 of the 2009 WADC is in any event established.

458. Given the circumstances, and for the reasons already set out above, the possibility that the Athlete was just an unknowing participant can be excluded.

459. In conclusion, the Disciplinary Commission holds that a violation of Art. 2.2 of the 2009 WADC /use of a Prohibited Method – (M2) Tampering is established against the Athlete.

460. Subsidiarily, the same circumstances shall in any event be deemed as constitutive of a violation of art. 2.5 of the 2009 WADC.

c. <u>Use (Art 2.2 of the 2009 WADC)</u>

461. Use or Attempted Use of a Prohibited Substance can be established by any reliable means.

462. This includes witness evidence.

463. In the present case, the fact that the Athlete was using Prohibited Substances can already be inferred from his presence on the Duchess List.

464. The athletes on this list were intended to receive the Duchess Cocktail and therefore to use it.

465. The protection from which the Athlete benefited allowed him to use Prohibited Substances. This protection was specifically in place during the Olympic Games Sochi 2014 and had the purpose of allowing for use of Prohibited Substances during that period.

466. The Disciplinary Commission considers that, in the context of the application of a scheme, which had just that purpose, an inference may be legitimately drawn that the urine substitution had a purpose, which was indeed served, *i.e.* to hide actual use of Prohibited Substances during the period in question.

467. Materially speaking, a finding of use violation in the circumstances described does not alter the resulting consequences. In a situation as exceptional as this one, the Disciplinary Commission considers it legitimate to draw the logical implication from the fact that the cover-up has a purpose *i.e.* to hide actual use of Prohibited Substances.

468. Such a logical inference can be used against the participants in a cover-up scheme.

469. As was also mentioned above, the best and safest period to use the cocktail was the "protected" period of the Olympic Games Sochi 2014. Accordingly, the likelihood that it was used in this period is very high.

470. Potential direct evidence of such use has been suppressed. However, there remains the inference, which can be drawn from just that suppression and the purpose it had.

471. Accordingly and based on this inference, the Disciplinary Commission finds that the Athlete did also commit another anti-doping rule violation within the meaning of Art. 2.2 of the 2009 WADC, this time consisting of use of Prohibited Substances.

d. <u>Cover-up / Complicity (art. 2.8 of the 2009 WADC)</u>

472. The application of the cover-up scheme in place and implemented in Sochi and beyond involved a complex conspiracy over time and the participation of several participants, from the athletes, to intermediaries, laboratory staff and ministry representatives.

473. All of them were participants in a conspiracy, which had the goal of covering up doping practices. This applies also to the athletes, and among them the Athlete Chudinov, who participated in the cover-up and as such committed a violation of Art. 2.8 of the 2009 WADC (see IP Report 2, p.46-7).

474. This conclusion of complicity can be reached even if the Athlete takes part in the scheme in his own interest and in order to cover-up his own violations.

475. In the decision *CAS 2007/A/1286-8-9; Eder, Tauber & Pinter*, which arose in connection with another conspiracy (albeit of much lesser scope) which affected the Olympic Games Torino 2006, the CAS established the corresponding concept of vertical complicity pursuant to which an athlete embarking for its own interest in a conspiracy involving other athletes commits a violation pursuant to art. 2.8 WADC (*CAS 2007/A/1286-8-9*, p.27,#76).

476. The Disciplinary Commission thus finds that through his participation in a complex scheme involving several athletes and other participants and having the purpose of covering up doping practices, the Athlete also committed a breach of art. 2.8 of the 2009 WADC.

J. CONSEQUENCES OF THE ANTI-DOPING RULE VIOLATIONS

a. Disqualification

477. In application of Art. 7.1 and 8.1 of the IOC Anti-Doping Rules, the results achieved by the Athlete during the Olympic Games Sochi 2014 shall be annulled, with all resulting consequences (notably withdrawal of medals, diplomas, pins *etc.*).

478. In respect of the above consequences, the Disciplinary Commission observes that in the presence of the anti-doping rules violations in this case, the only conceivable consequence is disqualification of any and all results in application of Art. 8.1 of the IOC Anti-Doping Rules.

479. The Disciplinary Commission underlines that the nature of the violation and the circumstances of this case make this consequence inescapable.

480. The results of the competitions directly concerned by a sample for which tampering is directly and objectively established are already to be automatically disqualified in application of Art. 7.1 of the IOC Anti-Doping Rules.

481. As far as the other results are concerned, the Disciplinary Commission considers that the Athlete has not demonstrated that he bears no fault or negligence. His involvement in the scheme affects his entire participation in the Olympic Games.

482. Given the circumstances and the violations at stake, the Disciplinary Commission finds with no hesitation that all the results have to be disqualified in application of Art. 8.1 of the IOC Anti-Doping Rules. Any other solution would be inconceivable.

b. Ineligibility for the Olympic Games

483. In application of Art. 7.3 the IOC Anti-Doping Rules, the Disciplinary Commission may declare the Athlete temporarily or permanently ineligible for subsequent editions of the Games of the Olympiad and Olympic Winter Games.

484. This measure corresponds to an application of art. 59 §2.1 of the Olympic Charter, which provides for the possibility of temporary or permanent ineligibility *"in the case of any violation of the Olympic Charter, of the World Anti-Doping Code, or of any other decision or applicable regulation issued by the IOC or any IF or NOC, including but not limited to the IOC Code of Ethics, or of any applicable public law or regulation, or in case of any form of misbehaviour"*.

485. In this case, the Disciplinary Commission considers that the implementation of the sample-swapping scheme was one of the worst ever blows against the integrity and reputation of the Olympic Games.

486. It would be inconceivable that the Olympic Movement would have to continue to receive in its midst any athlete or person having been howsoever implicated in such a scheme.

487. The Disciplinary Commission underlines that it is not so much the fact that specific violations of the IOC Anti-Doping Rules were committed which justifies the application of a measure of ineligibility but much more the fact that they were part of a conspiracy, which infected and subverted the Olympic Games in the worst possible manner.

488. The participation in such conspiracy not only constitutes violations pursuant to the IOC Anti-Doping Rules, it constitutes a fundamental misbehaviour directly affecting the core values of the Olympic Games.

489. The application of ineligibility is particularly justified in relation to the next Olympic Winter Games, which will be held in PyeongChang in 2018. Given the complexity and the difficulty of the matter, it took a long time to determine precisely what happened during the Olympic Games Sochi 2014. From the Olympic Movement perspective, and particularly from the perspective of the clean athletes, who feel cheated and deprived of participation in the Olympic Games under honest and fair conditions, no adequate consequences have been so far been drawn.

490. In this context, the Disciplinary Commission observes that the participation in the Olympic Games PyeongChang 2018 of athletes who have been directly implicated in the scandalous cover-up scheme, which affected the previous Olympic Winter Games in Sochi, would be yet another blow to the integrity of the Olympic Games.

491. Given the severity of the prejudice and the long-lasting harm that has been caused to the Olympic Movement, the Disciplinary Commission is further of the opinion that the ineligibility shall not be limited to the next Olympic Winter Games but shall apply to all subsequent editions of the Games of the Olympiad and Olympic Winter Games.

492. As a final observation, the Disciplinary Commission underlines that it is conscious that the decision it issues in respect of ineligibility is likely to be challenged with reference to the CAS award *CAS 2011/O/2422 USOC v/ IOC*.

493. The Disciplinary Commission considers that the present situation is not the same as the one, which was the subject matter of that award.

494. In that case, the decision of ineligibility was not linked with a decision made in connection with violations that occurred at the Olympic Games, but rather in connection with decisions issued by other bodies in a different case. This notably raised the issue of double jeopardy. Such an issue is not at stake in the present case. In this case the ineligibility is part of one decision, addressing consequences of occurrences at the Olympic Games in application of the regulations applicable thereto.

495. The Disciplinary Commission also considers that this matter is an occasion to reconsider and clarify the situation with respect to the entitlement of the IOC to adequately manage eligibility for the Olympic Games.

496. It is the Disciplinary Commission's opinion that, when the violations in question represent fundamental breaches of the Olympic values, the IOC shall be entitled to apply a rule, which is clearly enshrined in the Olympic Charter, the fundamental text governing the Olympic Movement.

497. The issue in this case is not whether it is legitimate to declare ineligible an athlete who committed an individual violation of the Rules, which would put only his or her own integrity in question.

498. The issue here is what consequences may arise regarding the participation in the Olympic Games of participants in a conspiracy, which, beyond the anti-doping rule violations which it involved, constituted a fundamental breach of the Olympic values and, as such, ethically unacceptable misbehaviour within the meaning of Art. 59 §2.1 of the Olympic Charter.

499. In such a context, ineligibility must be applicable and is clearly supported by Art. 59 §2.1 of the Olympic Charter.

500. This is the fundamental rationale of the decision that the Disciplinary Commission hereby issues.

501. The Disciplinary Commission observes that the same measure was applied in the context of the (lesser) conspiracy which affected the Winter Olympic Games 2006 and was affirmed by the CAS (*CAS 2007/A/1286-8-9 J. Eder, M. Tauber and J. Pinter vs the IOC*).

c. Consequences beyond the Olympic Games

502. In application of Art. 8.3 of the IOC Anti-Doping Rules, the further management of the consequences of the anti-doping rule violations, and in particular the imposition of sanctions over and above those related to the Olympic Games Sochi 2014, shall be conducted by the relevant International Federation, the IBSF.

* * * * *

IV. DECISION

PURSUANT to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to The International Olympic Committee Anti-Doping Rules applicable to the XXII Olympic Winter Games in Sochi, in 2014 and, in particular, Articles 1, 2, 6, 7, 8 and 9 thereof:

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
RULES

I. The Athlete, Sergei CHUDINOV:

   a) is found to have committed anti-doping rule violations pursuant to Article 2 of The International Olympic Committee Anti-Doping Rules applicable to the XXII Olympic Winter Games in Sochi, in 2014;

   b) is disqualified from the events in which he participated upon the occasion of the XXII Olympic Winter Games in Sochi, in 2014, namely the Men's Individual Skeleton Event, in which he ranked 5th and for which he was awarded a diploma;

   c) has the diploma obtained in the above-mentioned Event withdrawn and is ordered to return the same to the International Olympic Committee.

II. The International Bobsleigh and Skeleton Federation is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.

III. Sergei CHUDINOV is declared ineligible to be accredited in any capacity for all editions of the Games of the Olympiad and the Olympic Winter Games subsequent to the Sochi Olympic Winter Games.

IV. The Russian Olympic Committee shall ensure full implementation of this decision.

V. The Russian Olympic Committee shall notably secure the return to the International Olympic Committee, as soon as possible, of the diploma awarded in connection with the Men's Individual Skeleton Event.

VI. This decision enters into force immediately.

Lausanne, 15 December 2017 (operative part of the Decision issued on 27 November 2017)

In the name of the IOC Disciplinary Commission

Denis Oswald, Chairman

Gunilla Lindberg

Tony Estanguet