CAS 2018/O/5704 International Association of Athletics Federations (IAAF) v. Russian Athletics Federation (RUSAF) & Vera Ganeeva

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Jacques Radoux, Legal Secretary to the European Court of Justice, Luxembourg

in the arbitration between

International Association of Athletics Federations (IAAF), Monaco

Represented by Mr. Ross Wenzel, Mr. Nicolas Zbinden, attorneys-at-law with Kellerhals Carrard, Lausanne, Switzerland

Claimant

and

Russian Athletics Federation (RUSAF), Moscow, Russia,

First Respondent

and

Ms. Vera Ganeeva, Moscow, Russia

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (the "Claimant" or the "IAAF") is the world governing body for track and field, recognized as such by the International Olympic Committee (the "IOC"). One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code ("WADC"), the running and enforcing of an anti-doping programme. The IAAF, which has its registered seat in Monaco, is established for an indefinite period of time and has the legal status of an association under the laws of Monaco.

2. The Russian Athletics Federation (the "First Respondent" or the "RUSAF") is the national governing body for the sport of Athletics in Russia, with its registered seat in Moscow, Russia. The RUSAF is a member federation of the IAAF for Russia, but its membership is currently suspended.

3. Ms. Vera Ganeeva (the "Second Respondent" or the "Athlete"), born on 6 November 1988, is a Russian athlete specialising in discus. She competed, inter alia, in the 2012 London Olympic Games and it is uncontested that, for the purposes of the IAAF Competition Rules (the "IAAF Rules"), she is an "International-Level Athlete".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 26 May 2016, the Athlete was informed by the IOC that her sample collected on 3 August 2012 on the occasion of the 2012 London Olympic Games had been retested (the "London Retesting Violation") and tested positive for metabolites of Dehydrochloromethyltestosterone ("DHCMT"). On 27 January 2017, the IOC Disciplinary Commission found the Athlete to have committed an anti-doping rule violation ("ADRV") and disqualified her from the women's discus throw event of the 2012 London Olympic Games in which she ranked 23rd. The Athlete did not appeal that decision.

6. Consecutively, the IAAF opened a proceeding against the Athlete which led to the signature, on 10 April 2017, by the Athlete of an Acceptance of Sanction Form. Thereby she accepted, as a sanction for the London Retesting Violation, a period of ineligibility of two (2) years, starting 2 July 2016, and a disqualification of her competitive results for a period of 2 years from 3 August 2012.

7. This case concerns a claim by the IAAF against the Second Respondent for having committed further ADRV's, in particular Rule 32.2 (b) of the 2012 IAAF Rules (*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*). The RUSAF has been included in the claim as First Respondent, as it has not been able, due

to the suspension of its IAAF membership, to conduct a hearing process in the present case.

8. The claim is mainly based on elements relating to the so-called "*Washout Schedules*" which have been described by Prof. Richard H. McLaren in his first report, submitted on 16 July 2016 (the "First McLaren Report"), as well as in his second report, submitted on 9 December 2016 (the "Second McLaren Report") and the underlying evidence (the "Washout Allegation").

9. The key findings of the First McLaren Report were summarized as follows:

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

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

3. The Ministry of Sport directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the Russian Federal Security Service, the Center of Sports Preparation of National Teams of Russia and both Moscow and Sochi Laboratories.

10. The Second McLaren Report confirmed these key findings and contained a description of the so-called "*washout testing*" prior to certain major events, including the 2012 London Olympic Games and the 2013 IAAF World Championships in Moscow. The washout testing started in 2012, when Dr. Grigory Rodchenkov, the former director of the formerly WADA accredited laboratory in Moscow, developed a secret cocktail called the "Duchess" with a very short detection window (page 23 of the Second McLaren Report). According to the Second McLaren Report, "*this process of pre competition testing to monitor if a dirty athlete would test 'clean' at an upcoming competition is known as washout testing*".

11. The Second McLaren Report went on to describe that the washout testing was used to determine whether the athletes on a doping program were likely to test positive at the 2012 London Olympic Games (see pages 71-78). At that time, the relevant athletes were, according to said Report, providing samples in official doping control BEREG Kits. While the results of the Laboratory's initial testing procedure ("ITP"), which show the presence of Prohibited Substances, were recorded on the washout list, the samples were automatically reported as negative in the Anti-Doping Administration and Management System ("ADAMS") as described in the Second McLaren Report.

12. The Second McLaren Report went on to explain that the covering up of falsified ADAMS information only worked if the sample stayed within the control of the Moscow Laboratory, and later destroyed. Given that BEREG kits are numbered and can be audited or also seized and tested, the Moscow Laboratory realized that it would be only a matter of time before it was uncovered that the content of samples bottle would not match the entry into ADAMS.

13. Therefore, according to the Second McLaren Report, the washout testing program evolved prior to the 2013 IAAF World Championships in Moscow. It was decided that the washout testing would no longer be performed with official BEREG kits, but from containers selected by athletes, such as Coke and baby bottles filled with their urine. The athlete's name would be written on the selected container to identify his or her sample.

14. The Second McLaren Report went on to explain that this "under the table" system consisted of collecting samples in regular intervals and subsequently testing those samples for quantities of prohibited substance to determine the rate in which those quantities were declining so that there was certainty the athlete would test "clean" in competition. If the washout testing determined that the athlete would not test "clean" at competition, he or she was not sent to the competition.

15. According to the Second McLaren Report, the Moscow Laboratory developed a schedule to keep track of those athletes who were subject to this unofficial washout testing program (the "Washout Schedule"). This Washout Schedule was updated regularly when new washout samples arrived in the Laboratory for testing.

16. The Washout Schedule was made public by Prof. McLaren on a website (https://www.ipevidencedisclosurepackage.net/). Amongst other documents that were made public were numerous email exchanges containing references to or from the Washout Schedule. All documents contained on the website were anonymized for privacy reasons. However, each identified athlete was attributed one or more code numbers which were substituted for their name on the relevant documents. Prof. McLaren then informed the IAAF that the code numbers for the Athlete were A0230 and A0231.

17. On 1st December 2017, the Athletics Integrity Unit of the IAAF informed, on behalf of the IAAF, the Athlete that the evidence provided by Prof. McLaren (the "McLaren Evidence") indicated that she had used prohibited substances in the lead-up to the 2012 London Olympic Games and the Moscow World Championships, benefitting in each case from the Disappearing Positives Methodology and Washout Testing and that, as a consequence, the IAAF intended to refer the McLaren Evidence against the Athlete to the CAS with a view to seeking an increased sanction to the one she had accepted on the basis of aggravating circumstances. The passage of this letter referring to the evidence concerning the Athlete reads as follows:

> *"(i) Accessing the Documents*
>
> *All documents contained on the EDP website were anonymised, not least in order to protect the integrity of the on-going investigations. Each identified athlete was attributed one or more codes, which were substituted for their name on the relevant documents.*
>
> *Your EDP codes are A0230 and A0231. You may access the relevant documents on the EDP website, in particular by entering into the search bar your individual athlete codes, the relevant sample codes or by entering a specific EDP document reference code (e.g. EDP1166).*

The principal evidence of your anti-doping rule violations is summarized below and the most relevant EDP document codes are provided for convenience.

(ii) London Washout Testing

Two of your (official) doping control samples feature on the London Washout Schedules as follows: (i) sample 2728653 collected on 16 July 2012 (see, for example, EDP0019) and (ii) sample 2729827 collected on 25 July 2012 (see, for example, EDP0023).

The 25 July 2012 sample is recorded as containing oral turinabol (see EDP0023). Oral turinabol is a synonym for dehydrochloromethyltestosterone or DHCMT and is a prohibited exogenous androgenic anabolic steroid pursuant to section S1(a) of the WADA Prohibited List.

(iii) Moscow Washout Testing

Three (unofficial) samples on the Moscow Washout Schedules are listed as belonging to you; they date from 14, 25 and 30 July 2013 respectively (see, for example, EDP0028).

The following information is recorded on the Moscow Washout Schedules in respect of the 14 July sample:

- *T/E 99; and*
- *4-OH-Testosterone10*
- *There is also a comment referring to prohormones.*

The following information is recorded on the Moscow Washout Schedules in respect of the 25 July 2013 sample:

- *T/E 3.5; and*
- *4-OH-Testosterone 20 ng/ml*

The 30 July 2013 sample is described as appearing to be clear."

18. The IAAF granted the Athlete an opportunity to provide her explanations in respect of this evidence by 15 December 2017 at the latest and informed her that on the basis of this evidence she would, if established, merit the imposition of an additional two-year sanction to the two year sanction that she accepted in respect of the London Retesting Violation. Further, the IAAF informed the Athlete that if she admitted the violations described above by 15 December 2017 at the latest, she will avoid the application of the additional two-year sanction and that the IAAF would take no further action against her in respect of the McLaren Evidence against her.

19. On 15 December 2017, the Athlete disputed the allegations put forward against her and provided her explanations which were, in substance, the same then her submissions in the present proceedings and which are summarized below.

20. Not convinced by the explanations given by the Athlete, the IAAF informed the latter that her case would be referred to the CAS. IAAF granted the Athlete a deadline to state whether she preferred a first instance CAS hearing before a sole arbitrator with a right to appeal to the CAS (IAAF Rule 38.3) or a sole instance before a panel of three arbitrators with no right to appeal, save to the Swiss Federal Tribunal (IAAF Rule 38.19).

21. Although the Athlete had, within the given deadline, indicated her preference for her case to be heard as a single hearing, it was impossible for the IAAF to proceed as wished, as the World Anti-Doping Agency (the "WADA") did not give its consent to the Athlete's request.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 26 April 2018, the IAAF filed its Request for Arbitration against the RUSAF and Vera Ganeeva (together the "Respondents") in accordance with Article R38 of the Code of Sports-related Arbitration (the "Code"). The IAAF asked for this Request to be considered as its Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the Code and in compliance with IAAF Rule 38.3 requested the matter to be submitted to a sole arbitrator, acting as a first instance body.

23. On 2 May 2018, the CAS Court Office initiated the present arbitration and specified that, in accordance with IAAF Rule 38.3, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the CAS Appeals Arbitration Division rules, Articles R47 *et seq.* of the Code. The Respondents were further invited to submit, in line with Article R55 of the Code, their Answer within 30 days.

24. On 30 May 2018, the CAS Court Office, pursuant to Article R54 of the Code, informed the Parties that the arbitral panel appointed to hear the present case was constituted by: Mr. Jacques Radoux, Legal Secretary to the European Court of Justice in Luxembourg.

25. On 31 May 2018, the Second Respondent sent an email to the CAS Court Office which was considered to be the Athletes Answer. The First Respondent did not submit an Answer within the given deadline.

26. On 11 June 2018, the CAS Court Office, *inter alia*, invited the Parties to state, before 18 June 2018, whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

27. On 18 June 2018, the Claimant informed the CAS Court Office that it preferred for a hearing to be held in this matter. The Respondents did not express their position on the question of a hearing within the given deadline.

28. On 13 July 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, which could be held in Lausanne on 15

August 2018 and that participation via Skype may be, upon request, in particular by the Second Respondent, allowed by the Sole Arbitrator.

29. On 26 July 2018, the CAS Court Office informed the Parties that given the availability of the Claimant and the Second Respondent, a hearing would be held on Wednesday 15 August 2018 at 9.30am (CET) at the CAS Court Office in Lausanne, Switzerland, and that the Second Respondent's request to attend the hearing via Skype was granted.

30. On 6 August 2018, on behalf of the Sole Arbitrator, the CAS Court Office issued an Order of Procedure that was sent to the Parties. It was signed by the Claimant on 10 August 2018. None of the Respondents signed said Order of Procedure.

31. On 15 August 2018, a hearing took place at the CAS Court Office. The Sole Arbitrator was assisted by Mrs. Andrea Zimmermann, Counsel to the CAS, and joined by the following participants:

For the IAAF:
Mr. Ross Wenzel, Mr. Nicolas Zbinden, and Mr. Livio Marelli (counsels) (in person),
Mrs. Alexandra Volkova (Interpreter) (in person).

For the Athlete:
Ms. Vera Ganeeva (Athlete) (by skype),
Mrs. Jelena Bukova (Interpreter) (by skype).

32. The Interpreters were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law.

33. At the inception of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected and that they had no objections as to the manner in which the proceedings had been conducted.

IV. SUBMISSIONS OF THE PARTIES

A. The IAAF's submissions

34. In its Request for Arbitration, the IAAF requested the following relief:

i. CAS has jurisdiction to decide on the subject matter of this dispute.

ii. The Request for Arbitration of the IAAF is admissible.

iii. The Athlete is found guilty of an anti-doping rule violation in accordance with Rule 32.2(b) of the IAAF Rules.

iv. An additional period of ineligibility of two years is imposed upon the Athlete, commencing on the date of the (final) CAS Award.

v. *All competitive results obtained by the Athlete from 25 July 2012 through to the commencement of her additional period of ineligibility requested pursuant to the subparagraph (iv) above (to the extent not already disqualified by the Acceptance of sanction signed on 10 April 2017) are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*

vi. *The arbitration costs be borne entirely by the First Respondent or, in alternative, by the Respondents jointly and severally.*

vii. *The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to the IAAF's legal and other costs.*

35. The IAAF's submissions, in essence, may be summarized as follows:

- It follows from article R58 of the Code that the IAAF Anti-Doping Rules (the "IAAF ADR"), which entered into force on 6 March 2018, apply. Pursuant to Rule 13.9.5 of the IAAF ADR: "*In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise.*" The Athlete having been affiliated to RUSAF and having participated in competitions of RUSAF and IAAF, including at the time of the asserted ADRVs in 2012-2013, she is subject to the IAAF ADR. Pursuant to Rule 21.3. of the IAAF ADR, ADRVs committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged ADRV and, for procedural matters, to the 2016-2017 IAAF Competition Rules, effective from 1st November 2015 (the "2016-2017 IAAF Rules"). The IAAF anti-doping regulations in force at the time of the asserted ADRVs, which shall apply for substantive matters, were the 2012-2013 IAAF Competition Rules (the "2012-2013 IAAF Rules"). Rule 32.2.(b) of the 2012-2013 IAAF Rules forbids the Use or attempted Use by an athlete of a Prohibited Substance or a Prohibited Method. Pursuant to rule 33.3 of the 2012-2013 IAAF Rules, facts related to ADRVs "*may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information*".

- The IAAF submits that the Athlete committed Use violations in the years 2012 and 2013 on the basis of the Washout Schedules. She was one of the protected athletes who featured on the London Washout Schedules and who's positive samples, i.e. the sample of 25 July 2012 which contained, according to the ITP, Oral Turinabol, in the lead up to the 2012 London Olympic Games was automatically reported as negative in ADAMS by the Moscow Laboratory. As a result of this monitoring of the Athlete's values, the sample provided by the Athlete on 3 August 2012 at the 2012 London Olympic Games was found to be negative. However, as the London retesting violation shows, the Athlete's sample did contain metabolites of DHCMT. The analytical result from the official doping control sample at the 2012 London Olympic Games, therefore, corroborates the reliability of the London Washout Schedules. The Athlete also

features on the Moscow Washout Schedules, which comprised athletes who were known to be following a doping program. The three samples from the Moscow Washout Schedules were found to contain a prohibited steroid viz. 4-Hydroxytestosterone, and a decrease in the T/E ratio from 9 to 3.5.

- DHCMT and 4-Hydroxytestosterone are exogenous anabolic steroids, prohibited under S1.1a of the WADA Prohibited List. Thus, the Athlete has breached Rule 32.2(b) of the 2012-2013 IAAF Rules.

- Pursuant to Rule 40.2. of the 2012-2013 IAAF Rules, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless, inter alia, the conditions for increasing such period are met. Rule 40.6 of the 2012-2013 IAAF Rules provides: "*if it is established in an individual case involving an anti-doping rule violation [...] that aggravating circumstances at present which justify the imposition of the period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete [...] can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping violation.*" The 2012-2013 IAAF Rules list examples of aggravating circumstances such as "*the Athlete [...] committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping violations; the Athlete [...] used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed the Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond otherwise applicable period of Ineligibility; the Athlete [...] engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.*" Further, according to Rule 40.7 (d) of the 2012-2013 IAAF Rules, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances in the sense of Rule 40.6.

- In the present case there are several aggravating circumstances, namely (1) the use of multiple anabolic steroids; (2) in the lead up to major competitions in 2012 and 2013; (3) the Athlete was part of a centrally dictated doping scheme and she provided unofficial samples for washout testing; (4) the official samples she provided and that did test positive for prohibited substances were declared as negative in ADAMS. Thus, had the violations been assessed together at the time, the Athlete would have received an aggravated sanction that would have been towards the upper end of the two to four-year period of ineligibility that could be imposed in such an event. Therefore, the IAAF requests that the Athlete be sanctioned with an additional two-year Ineligibility period.

- The Athlete having already accepted the disqualification of her results for a period of two years from 3 August 2012, the IAAF submits that all other results obtained by the Athlete from the date of the fist evidence of doping, i.e. the sample taken on 25 July 2012, must also be disqualified.

B. The Athlete's submissions

36. Although not submitting a formal request for relief, the Athlete, in her Answer, can be understood as asking the Sole Arbitrator to:

i. Declare the Athlete not guilty of one or more anti-doping rule violations in 2012 or 2013 under Rule 32.2 (b) of the 2012 IAAF Rules, except for the one she already accepted a period of ineligibility for (i.e. sample of 3 August 2012);

ii. Dismiss all claims raised by the IAAF (increase the period of ineligibility and disqualification of all competitive results obtained by the Athlete from 25 July 2012 through to the commencement of the additional period of ineligibility sought by the IAAF;

iii. The IAAF shall bear the entirety of the arbitration costs.

37. The Athlete's submissions may be summarized as follows:

- All her results have been achieved by hard training. She has never used prohibited substances or a prohibited method. She has not been part of any cover up like the washout schedules or programs brought forward by the IAAF.

- She has never communicated with Dr. Rodchenkov or Dr. Velikodny and does not know these people.

- The Athlete states that she has never provided unofficial samples and has never provided a sample into a container different from the BEREG kits.

- She declares that she has never used Oral Turinabol and points out that it would not make sense for an athlete competing at the Olympic Games to use, shortly before the beginning of the Games, an anabolic steroid that is easily detected. Thus, there cannot be a positive finding in the sample from 25 July 2012. The positive finding in her sample provided at the 2012 London Olympic Games was must have been the due to the faulty methodology developed by Dr. Rodchenkov and his accomplices, i.e. Mr. Sobolevsky, for the purpose of extorting money from the athletes.

- In order to prove are arguments, the Athlete refers to the results in ADAMS which show that she has not used any prohibited substances. Further, she invites the Sole Arbitrator to check the data of her Athlete Biological Passport.

- In July 2013, she provided only two official samples, on 8 and 30 July, both of which proved to be clean as can be seen in ADAMS. All other sample on the Washout Schedule must belong to another athlete, as she did not provide any samples on the relevant dates.

- In any event, Dr. Rodchenkov is not a reliable witness. Further, Dr. Rodchenkov admitted during his testimony in the cases CAS 2017/A/5379 and CAS 2017/A/5422 that he had never seen a Russian athlete hand over specially

prepared clean urine nor seen any Russian athletes manipulate their doping samples. The diary of Dr. Rodchenkov cannot be used as evidence as it has, according to Prof. McLaren himself, "no evidential value".

- In the present case, as in case CAS 2017/A/5359, the alleged anti-doping rule violations are not established by reliable evidence.

V. JURISDICTION

38. The IAAF ADR, which are applicable because the Request for Arbitration was filed on 26 April 2018, expressly permit ADRV cases to be filed directly with the CAS and referred to a single arbitrator appointed by the CAS. In this regard, IAAF ADR Rule 38.3 provides as follows:

"*If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure of a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45.*"

39. In this case, RUSAF was suspended and could therefore not hold a hearing in the deadline set out in Rule 38.3 of the IAAF ADR. Further, it is established that the Athlete is an International-Level Athlete in the sense of the IAAF ADR.

40. In the light of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction in this procedure. In addition, the jurisdiction of CAS was not contested by the Respondents.

VI. ADMISSIBILITY

41. Although the present procedure is a first-instance procedure and has, thus, been assigned to the Ordinary Arbitration Division, pursuant to Rule 38.3 of the IAAF ADR cited above, the rules of the appeal arbitration procedure set out in the Code shall apply. It has however to be noted that Rule 38.3 clearly states that this application is "*without reference to any time limit for appeal*". Thus, the Request for Arbitration in the present case has to be considered made in a timely manner.

42. The Sole Arbitrator further notes that the Request for Arbitration, to be considered as combined Statement of Appeal and Appeal Brief for the purposes of articles R47 and R51 of the Code, complies with the formal requirements set out by the Code. In addition, there are no objections as to the admissibility of the IAAF's claims.

43. In these conditions, the Sole Arbitrator finds that the Request for Arbitration is admissible.

VII. APPLICABLE LAW

44. The present procedure is based on Rule 38.3 of the IAAF ADR. As already mentioned above, it follows from that rule that in a case directly referred to CAS "*the case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time of limit for appeal)*".

45. Thus, the provisions of the Code applicable to the appeal arbitration procedure are relevant in the present procedure.

46. Article R58 of the Code provides as follows:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

47. Rule 13.9.4 of the IAAF ADR provides as follows:

> "*In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.*"

48. This case is not an appeal. However, the purpose of the direct hearing at the CAS is to shortcut the otherwise applicable procedure. The substantive outcome of the shortcut should not differ from the outcome of the otherwise applicable procedure. Therefore, Rule 13.9.4 must apply by analogy.

49. Pursuant to Rule 13.9.5 of the IAAF ADR, the governing law shall be Monegasque law. However, the IAAF rules in question are to be interpreted in a manner harmonious with other WADC compliant rules.

50. Pursuant to Rule 21.3 of the IAAF ADR, anti-doping rule violations committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged anti-doping rule violation. With respect to the procedural matters, Rule 21.3 of the IAAF ADR provides that "*for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules*" shall apply and that "*for Anti-Doping Rule*

Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules" shall apply. Thus, the procedural issues of the present arbitration shall be governed by the 2016-2017 IAAF Rules.

51. According to Rule 21.3 of the IAAF ADR: "*the relevant tribunal may decide it appropriate to apply the principle of* lex mitior *in the circumstances of the case*".

52. The IAAF argues that the Athlete's alleged ADRVs occurred in the years 2012 and 2013 and that, as the substantive anti-doping provisions were the same in the IAAF Rules in place between 2012 and 2013, the 2012-2013 IAAF Rules should apply to the present case.

53. The Athlete not having objected to the IAAF assertions, the Sole Arbitrator considers that the Parties agreed that the substantive aspects of the present procedure are to be governed by the 2012-2013 IAAF Rules. He further considers that in view of the wording of Rule 21.3 of the IAAF ADR the sanction should be determined on basis of the *lex mitior*, which could be the IAAF ADR.

54. The Sole Arbitrator notes that, pursuant to Rules 33.1 of the 2012-2013 IAAF Rules, the burden of proof that an ADRV has occurred is on the IAAF and that the relevant standard of proof is that he must be comfortably satisfied that the Athlete committed an ADRV before making a finding against said athlete (see, e.g. CAS 2015/A/4163; CAS 2015/A/4129 and CAS 2016/A/4486).

VIII. MERITS

A. The Anti-Doping Rule Violations

55. The IAAF claims that the Athlete breached Rule 32.2(b) of the 2012-2013 IAAF Rules, which prohibits the Use or Attempted Use of a Prohibited Substance or a Prohibited Method.

B. Discussion on the evidence taken into account by the Sole Arbitrator

56. In reaching his decision, the Sole Arbitrator has accepted into evidence all the evidence provided by the IAAF, in particular the McLaren Evidence.

57. In this regard, the Sole Arbitrator recalls that the admittance of evidence is subject to procedural laws. Given that the 2016-2017 IAAF Rules govern the admittance of evidence, the Sole Arbitrator has to refer to Rule 33(3) of these rules, which provides: "*Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information.*"

58. As regards the other alleged Use Violation (violation of Rule 32.2(b) of the 2012-2013 IAAF Rules), considering the very large scope of elements that could be admitted as evidence, the Sole Arbitrator holds that the McLaren Evidence has to be considered as evidence in the sense of the 2016-2017 IAAF Rules and that if considered as reliable,

this evidence can be relied upon for the purpose of establishing facts related to an ADRV.

59. Further, when evaluating whether he was comfortably satisfied that an ADRV had occurred, the Sole Arbitrator did take into consideration all relevant circumstances of the case. In the context of the present case, and by analogy to other cases handled by the CAS concerning similar issues relating to similar evidence (CAS 2017/A/5379 and CAS 2017/A/5422), the relevant circumstances include, but are not limited, to the following:

- the IAAF is not a national or international law enforcement agency. Its investigatory powers are substantially more limited than the powers available to such bodies. Since the IAAF cannot compel the provision of documents or testimony, it must place greater reliance on the consensual provision of information and evidence and on evidence that is already in the public domain. The evidence that it is able to present before the CAS necessarily reflects these inherent limitations in the IAAF's investigatory powers. The Sole Arbitrator's assessment of the evidence must respect those limitations. In particular, it must not be premised on unrealistic expectations concerning the evidence that the IAAF is able to obtain from reluctant or evasive witnesses and other source.

- in view of the nature of the alleged doping scheme and the IAAF's limited investigatory powers, the IAAF may properly invite the Sole Arbitrator to draw inferences from the established facts that seek to fill in gaps in the direct evidence. The Sole Arbitrator may accede to that invitation where he considers that the established facts reasonably support the drawing of the inferences. So long as the Sole Arbitrator is comfortably satisfied about the underlying factual basis for an inference that the Athlete has committed a particular ADRV, he may conclude that the IAAF has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone.

- at the same time, however, the Sole Arbitrator is mindful that the allegations asserted against the Athlete are of the utmost seriousness. The Athlete is accused, inter alia, of having used Prohibited Substances and having knowingly benefitted from a doping scheme and system that was covering up her positive doping results and registered them as negative in ADAMS. Given the gravity of the alleged wrongdoing, it is incumbent on the IAAF to adduce particularly cogent evidence of the Athlete's deliberate personal involvement in that wrongdoing. In particular, it is insufficient for the IAAF merely to establish the existence of an overarching doping scheme to the comfortable satisfaction of the Sole Arbitrator. Instead, the IAAF must go further and establish, in each individual case, that the individual athlete knowingly engaged in particular conduct that involved the commission of a specific and identifiable ADRV. In other words, the Sole Arbitrator must be comfortably satisfied that the Athlete personally committed a specific violation of a specific provision of the 2012-2013 IAAF Rules.

- in considering whether the IAAF has discharged its burden of proof to the requisite standard of proof, the Sole Arbitrator will consider any admissible "reliable" evidence adduced by the IAAF. This includes any admissions by the

> Athlete, any "credible testimony" by third parties and any "reliable" documentary evidence or scientific evidence. Ultimately, the Sole Arbitrator has the task of weighing the evidence adduced by the Parties in support of their respective allegations. If, in the Sole Arbitrator's view, both sides' evidence carries the same weight, the rules on the burden of proof must break the tie.

60. As to the reliability of the McLaren Evidence, the Sole Arbitrator, notes, first, that the findings of the Second McLaren Report in relation to the "Disappearing Positive Methodology", meet – according to the report – a high threshold, as the standard of proof that was applied was "beyond reasonable doubt" and, thus, can be considered as sufficiently reliable (OG AD 16/009, and CAS 2017/O/5039). In this regard, the Sole Arbitrator further notices that Dr. Rodchenkov has, on several occasions, testified that the results that were supposed to be reported in ADAMS have been systematically registered as negative and that said testimony has, until now, not been proven wrong.

61. Second, in difference to the information related to Washout Schedules made public by Prof. McLaren (and which had been made available to the athletes), in which the names of the athletes had been replaced by codes, the documents submitted as evidence by the IAAF in the present case, which are the initial documents revised by Prof. McLaren and his team, contain the names of the athletes that provided the samples. Thus, this list is not affected by the errors that might have been made by Prof. McLaren and his team when coding the information contained therein.

62. Third, the reliability of the metadata of the evidence relied upon by Prof. McLaren to establish his Reports and by the IAAF in the present case has, at this stage, never been successfully contested and its contemporaneous character has not been questioned by the Athlete. Thus, the Sole Arbitrator sees no reasons to do so either and follows, on this aspect, the existing CAS jurisprudence (CAS 2017/O/5039).

63. This inference is not called into question by the allegation that Dr. Rodchenkov, from whose hard disk the Moscow Washout Schedule has been, according to the IAAF, extracted, would not be a reliable witness because he allegedly would make sure that the doping tests turned out positive without the athletes having used any of the prohibited substances found in order to extort money from the said athletes. Indeed, this allegation is not corroborated by any objective or material evidence and has therefore to be considered to be without any grounds. In this respect, the Sole Arbitrator notes that the allegations brought against Dr. Rodchenkov cannot be compared to the ones put forward by Russian track and field athletes against other Russian Officials, as in those cases there was reliable and substantiated evidence corroborating the accusations (CAS 2016/A/4417-4419-4420). This allegation does moreover not seem convincing as an extortion scheme does not require the establishment of said Washout Schedules and certainly does not require, first, the presence of athletes whose samples did not show any adverse analytical finding in the initial testing procedure ("ITP") of the Moscow Laboratory and, second, the details and comments which can be found on the Washout Schedules. The fact that, according to the information found in ADAMS, all official samples provided by the Athlete in the lead up to the 2012 London Olympic Games were negative, does not, in the view of the Sole Arbitrator, overturn this conclusion. Indeed, no evidential weight can be attributed to the results reported in ADAMS in the relevant time period and in 2013 as samples tested by the Moscow Laboratory have

been, according to the McLaren Evidence been automatically reported as negative in ADAMS by Dr. Rodchenkov or one of his colleagues/substitutes at the Moscow Laboratory.

64. Further, the Sole Arbitrator notes that it is uncontested that Dr. Rodchenkov, as director of Moscow Laboratory, was in a position to have access to all relevant data and information necessary to establish the Washout Schedules either himself or get them established by one of his subordinates at the Laboratory. It is moreover uncontested that the Moscow Laboratory was one of the leading anti-doping laboratories in the world and that it had the capacity to detect even the slightest traces of substances in a reliable manner. Finally, it is uncontested that Dr. Rodchenkov had (and still has) the scientific knowledge and experience required to establish the Washout Schedules. Thus, the evidence based on his scientific expertise can be considered reliable as well.

65. The Sole Arbitrator holds that no element has been brought forward to validly contest the argument that Dr. Rodchenkov or one of his colleagues from the Moscow Laboratory, in particular Mr. Tim Sobolevsky, set up the London and the Moscow Washout Schedules for the purpose of assuring that the athletes on the list would not test positive at the events they were preparing. In particular, the Sole Arbitrator's notes that no convincing element has been brought forward that would explain how Dr. Rodchenkov could have established, after having left his position of/as director of the Moscow Laboratory but before the publication of the results of the London Retests, a list with the names of athletes that allegedly had used prohibited substances, list which then turned out to be largely in line with the list of athletes whose samples, provided at the 2012 London Olympic Games and the 2013 IAAF World Championships, retested positive for exactly those substances referenced in the said Schedules. The fact that the McLaren Evidence contains, as Prof. McLaren has acknowledged during a hearing in other cases (CAS 2017/A/5379 and CAS 2017/A/5422), some errors does not invalidate the reliability of the whole findings as such, as an occasional error in the allocation of the codes in some cases does not affect the veracity of all the codes and the content of the samples allocated to the athletes. In any event, as already mentioned above, in the present matter, the evidence submitted by the IAAF does not contain the code number attributed to the Athlete, but the Athlete's name.

66. Finally, with regards to the argument that the positive findings in the retesting of the sample provided at the 2012 London Olympic Games was due to the faulty detection method developed, inter alia, by Dr. Rodchenkov, the Sole Arbitrator notes that such argument has already been thoroughly analyzed and then rejected by the CAS (CAS 2016/A/4803, 4804 & 4983). As no new elements have been raised in relation to this issue, the Sole Arbitrator does not see any valid grounds to distance himself from the findings of the Panel in those three cases.

67. The circumstance, that in other cases (CAS 2017/A/5379 and CAS 2017/A/5422) a Panel held that the mere fact that an athlete was on the Duchess List is not itself sufficient for the Panel to be comfortably satisfied that said athlete used prohibited substance cannot, in the view of the Sole Arbitrator, be transposed to the present or other cases in connection with the Washout Schedules as some of these Washout Schedules refer to samples given on a specific day, by a specific athlete in the context of an official anti-doping test. The fact that said athlete was tested can therefore not be contested. The

only element that could be contested is the positive finding by the Moscow Laboratory in its initial testing procedure ("ITP") related to the sample. However, as already mentioned above, the Sole Arbitrator considers that there is no convincing explanation other than then the one that the Washout Schedules have been established in a contemporaneous manner and on basis of the findings in the ITP carried out by the Moscow Laboratory as to how Dr. Rodchenkov could have, ex post, established a list of fictive positive tests belonging to a large number of athletes out of which a relatively big part had, as it would turn out later, provided samples at the 2012 London Olympic Games and the 2013 IAAF World Championships that contained the Prohibited Substances that are to be found on the Washout Schedules.

68. In view of these considerations, the Sole Arbitrator holds that the McLaren Evidence and the Washout Schedules (the London Washout Schedule and the Moscow Washout Schedule) are reliable elements that, taken together, form a body of concordant factors and evidence strong enough to establish an ADRV in this specific case.

C. Discussion on liability

69. As regards the alleged violation of Rule 32.2(b) of the 2012-2013 IAAF Rules, the Sole Arbitrator, first, recalls that in the present proceedings there is no indication that the information contained in the McLaren Reports would not be reliable. Second, he shares the view, expressed by other Panels, that the Washout Schedules must be read in the context of the McLaren Reports as a whole and constitute evidence that an athlete whose name appears on the said Washout Schedules used the prohibited substance(s) listed as having been found in his or her sample(s).

70. In regard to the specific case of the Athlete, the Sole Arbitrator notes that the London Washout Schedule contains one (1) entry related to the Athlete that shows the presence of Oral Turinabol or "DHCMT" which is an exogenous anabolic steroid in relation with an official sample provided on 25 July 2012. In this regard, it has to be recalled that it is not contested that the name on the London Washout Schedule refers to the Athlete. Further, it is not contested that on the date of this entry the Athlete underwent an official anti-doping control test although said sample was reported as negative on ADAMS.

71. Given that the presence of DHCMT, also detected by the ITP performed by the Moscow Laboratory in the sample provided on 25 July 2012, was established by the retest of the sample taken on 3 August 2012 the Sole Arbitrator considers that the AAF at the 2012 London Olympic Games confirms the evidence according to which the Athlete used a prohibited substance to prepare for this competition.

72. As regards the Moscow Washout Schedule, the Sole Arbitrator recalls that the said Schedule refers to the Athlete on three (3) occasions, in relation to samples provided on 14, 25 and 30 July 2013 in the lead up to the 2013 IAAF World Championships in Moscow. The Washout Schedule indicates, inter alia, that the first and second sample contained 4-OH-Testosterone or 4-Hydroxytestosterone and showed a respective T/E ratio of 9 and 3,5. Further, for the first of these samples there is a reference to "Prohormones". The third entry contains the indication: "*appears clear*". 4-Hydroxytestosterone is an exogenous androgenic anabolic steroid listed in the 2012 WADA Prohibited List and prohibited both in- and out-of-competition.

73. The arguments, raised by the Athlete, according to which she had never provided any unofficial sample nor taken part in a scheme and that the Moscow Washout Schedule is inconsistent cannot, in the eyes of the Sole Arbitrator, be followed. Indeed, first, as already mentioned above, the Athlete did not offer any valid explanation as to why her name appeared on the Moscow Washout Schedule, the simple allegation that it appears by mistake having been rejected as being without grounds. Second, the allegation that the Washout Schedule is inconsistent or has been compiled in order to blackmail athletes is contradicted by the fact that the analytical results of the different samples do show a pattern according to which the values found dropped more and more the closer the start of the World Championships came. This is confirmed by the fact that the level of the T/E ratio, which is commonly used and referred to in the WADA documents, i.e. WADA Technical Document TD 2004EAAS, for measuring the production and ratio of Testosterone to Epitestosterone (CAS 2017/O/5039), declined from 9 (sample of 14 July 2013) to 3,5 (sample of 25 July 2013). The Sole Arbitrator adheres to the view expressed by the Sole Arbitrator in the latter case that such a decline supports the assertion that the Athlete used 4-Hydroxytestosterone to prepare for the 2013 IAAF World Championships in Moscow. Moreover, there is not only no proof that Dr. Rodchenkov tried to blackmail the Athlete but it is clear that in order to do so, it was not necessary to establish a detailed list like the Moscow Washout Schedule which contains references to tests/analyses that show no use of prohibited substances. Further, the Athlete offered no explanation whatsoever as the why the Washout Schedule would contain remarks like "appears clear". Third, in the view of the Sole Arbitrator, the mere protestation of the Athlete that she never used a Prohibited Substance and/or that she never provided a sample in another container than an official one does not affect the status of the Moscow Washout Schedule as reliable evidence. Indeed, in the present case, the only violation that is reproached to the Athlete is the use of a prohibited substance, and not the provision of clean urine in non-official containers for the purpose of enabling her positive urine samples to be swapped at a later stage.

74. In the present case, the Sole Arbitrator thus considers that the Moscow Washout Schedule constitutes reliable evidence that the Athlete used a Prohibited Substance, i.e. 4-Hydroxytestosterone, to prepare for the 2013 IAAF World Championships in Moscow.

75. In the light of these considerations, the Sole Arbitrator is comfortably satisfied that the Athlete is guilty of having used a Prohibited Substance in the lead up to the 2012 London Olympic Games. In particular, the Sole Arbitrator is comfortably satisfied that the Athlete used Oral Turinabol (DHCMT) during her preparation for this major event as is shown by the results of the sample (2729827) as listed in the London Washout Schedule and dated 25 July 2012. The Sole Arbitrator is further comfortably satisfied that the Athlete is guilty of having used a Prohibited Substance in the lead up to the 2013 IAAF World Championships in Moscow. In particular, the Sole Arbitrator is comfortably satisfied that the Athlete used 4-Hydroxytestosterone during her preparation for this major event as is shown by the results of the samples respectively provided on 14 and 25 July 2013 as listed in the Moscow Washout Schedule.

76. Based on the above, the Sole Arbitrator finds that the Athlete violated Rule 32.2(b) of the 2012-2013 IAAF Rules.

D. Decision on sanction

77. In the present case, it is uncontested that the Athlete has served a period of ineligibility of two (2) years for the violation of Rules 32.2(a) of the 2012-2013 IAAF Rules as a result of the AAF in the retest of the sample provided on 3 August 2012 at the 2012 London Olympic Games.

78. Pursuant to Rule 40.7(d)(ii) of the 2012-2013 IAAF Rules, "*[i]f, after the resolution of a first anti-doping rule violation, facts are discovered involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification of the first violation, then an additional sanction shall be imposed based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time. Results in all events dating back to the earlier anti-doping rule violation will be Disqualified as provided in Rule 40.8. To avoid the possibility of a finding of aggravating circumstances (Rule 40.6) on account of the earlier-in-time but later-discovered violation, the Athlete or other Person must voluntarily admit the earlier anti-doping rule violation on a timely basis after notice of the violation for which he is first charged (which means no later than the deadline to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again). The same rule shall also apply when facts are discovered involving another prior violation after the resolution of a second anti-doping rule violation.*"

79. Rule 40.2 of the 2012-2013 IAAF Rules provides that the period of ineligibility for violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of ineligibility (Rules 40.4 and 40.5 of the 2012-2013 IAAF Rules) or for increasing it (Rule 40.6 of the 2012-2013 IAAF Rules) are met.

80. Pursuant to Rule 40.6 (a) of the 2012-2013 IAAF:

> "*If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.*
>
> (a) *Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as a part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating*

circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility."

81. In relation to violations that have to be considered as one single violation, Rule 40.7(d)(i) of the 2012-2013 IAAF Rules provides that "*the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6).*"

82. In the present case, the Sole Arbitrator agrees with the IAAF that if the violations in the centre of the present proceedings had been assessed together with the ADRV for which the Athlete has already accepted and served a period of ineligibility of two (2) years, all violations would have been considered, together, as single first violation and Rule 40.7(d)(i) would have applied.

83. The IAAF argues, that in the present case a certain number of aggravating factors set out in Rules 40.6 of the 2012-2013 IAAF Rules are relevant, namely (1) the Athlete used multiple exogenous anabolic steroids in the lead up to the 2012 London Olympic Games and the 2013 IAAF World Championships; (2) the Athlete was part of a centralised doping scheme, she provided unofficial samples for washout testing and those of her official samples that tested positive for prohibited substances were falsely reported as being clean.

84. The Sole Arbitrator notes (1) that the London Washout Schedule shows that the Athlete used one prohibited substance (DHCMT) in the lead up to the 2012 London Olympics Games; (2) that the Moscow Washout Schedule shows that the Athlete used another prohibited substance (4-Hydroxytestosterone) in the lead up to the 2013 IAAF World Championships; (3) that the Athlete committed a violation of Rule 32.2(a) of the 2012-2013 IAAF Rules sanctioned with a two (2) year period of ineligibility and (4) that all of these ADRV were committed as part of a (centralised) doping plan or scheme as the Athlete's name appears with the name of other athletes on the Washout Schedules and that one of her official samples (25 July 2012) that tested positive for a prohibited substance in the ITP was registered as negative in ADAMS.

85. In view of these aggravating circumstances and in absence of any mitigating circumstances, the Sole Arbitrator is comfortably satisfied that if the violations of Rule 32.2(b) of the 2012-2013 IAAF Rules in the centre of the present proceeding had been assessed together with the violation of Rule 32.2(a) of the 2012-2013 IAAF Rules, this would have led to the imposition of an increased period of ineligibility. Indeed, the Sole Arbitrator finds that the Athlete used multiple prohibited substances and that she used a prohibited substance (exogenous anabolic steroids) on multiple occasions. Given that, on top, the Athlete was part of a doping scheme or plan, the Sole Arbitrator considers that a period of ineligibility of four (4) years would have been appropriate. Thus, considering the seriousness of the Athlete's ADRV, the Sole Arbitrator finds that Rule 40.6(a) shall apply and that the period of ineligibility of two (2) years already served by the Athlete should be prolonged with an additional period of ineligibility of two (2) years.

86. In the present case, the IAAF argues that the period of ineligibility should start on the date of the CAS Award.

87. According to Rule 40.10 of the 2012-2013 IAAF Rules, the period of ineligibility shall, as a general rule, "*start on the date of the hearing decision providing for Ineligibility*". In the present case, none of the exceptions provided for in Rule 40.10 is applicable. Thus, the period of ineligibility should start at the date of the Award.

88. However, the Sole Arbitrator considers that in the present case Rule 10.10.2 of the IAAF ADR, which can be considered as lex mitior, should apply. According to this provision: "*where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the period of Ineligibility may be deemed to have started at an earlier date, commencing as early as the date the Anti-Doping Rule Violation last occurred (e.g., under Article 2.1, the date of Sample collection). All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified*".

89. In the present case, the period of time that elapsed between the publication of the Second McLaren Report on 9 December 2016 and the introduction of the present proceeding on 26 April 2018 seems significant. Moreover, the Sole Arbitrator notes that almost one year elapsed after the publication of the said Report before the IAAF contacted the Athlete to inform her that it had had the opportunity to review and investigate the First and Second McLaren Reports and that it intended to refer the McLaren Evidence against the Athlete to the CAS. This delay is even more surprising as the IAAF was aware not only of the fact that the Athlete was amongst the athletes whose sample provided at the 2012 London Olympics had retested positive for DHMCT but also of the fact that the Athlete had signed, on 10 April 2017, an acceptance of sanction form according to which her two period of ineligibility would come to an end on 1 July 2018.

90. Under these conditions, the Sole Arbitrator holds that the supplementary two (2) year period of ineligibility shall start on 2 July 2018 with all the consequences, including disqualification of all the competitive results achieved by the Athlete between the 2 July 2018 and the notification of the present Award.

E. Disqualification

91. This case concerns ADRVs committed in 2013 and 2014 and the applicable rules should, according to the Parties, be the 2012-2013 IAAF Rules. Rule 40.8 of these Rules provides:

> "*In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rule 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money.*"

92. Although the IAAF sought, in its written submissions, that the Athlete's competitive results should be disqualified from the date of the proof of the earliest ADRV, i.e. 25 July 2012, until the date of her additional period of ineligibility to the extent not already disqualified by the acceptance of sanction signed by the Athlete on 10 April 2017, i.e. from 3 August 2012 to 2 August 2014, it acknowledged, at the hearing, that the Sole

Arbitrator could, on the basis of the fairness exception set out in Rule 10.8 of the IAAF ADR, reduce that period.

93. The Sole Arbitrator notes that according to the wording of Rule 10.8 of the IAAF ADR, all the competitive results of the Athlete as from the moment of the earliest violation, i.e. 25 July 2012, until the start of her additional period of ineligibility, i.e. 1 (or 2) July 2018, would have to be disqualified, unless fairness requires otherwise.

94. While being aware that when assessing whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender (CAS 2017/O/5039), the Sole Arbitrator also notes that the question of fairness and proportionality in relation to the length of the disqualification period vis-à-vis the time which may be established as the last time that the Athlete objectively committed a doping offence can be taken into consideration (CAS 2016/O/4682).

95. In the present case, the Sole Arbitrator considers that as the earliest prove of the violation of Rule 32.2(b) of the 2013-2013 IAAF Rules dates back to 25 July 2012 and as the Athlete has already accepted the disqualification of all of her competitive results obtained from 3 August 2012 to 2 August 2014, it is fair and appropriate to limit the disqualification of all competitive results achieved by the Athlete to the period between 25 July 2012, date of the first entry in the London Washout Schedule, and 2 August 2014. Indeed, although having held, when assessing the appropriate sanction, that the ADRVs committed in the years 2012 and 2013 were severe as he has accepted the existence of aggravating circumstances according to Rule 40.6 of the 2012-2013 IAAF Rules, the Sole Arbitrator, in the absence of any evidence that the Athlete used prohibited substances or methods after 30 July 2013, i.e. the last entry on the Moscow Washout List, the Sole Arbitrator does not consider it fair to disqualify the results achieved by the Athlete between 3 August 2014, date of the end of the disqualification period already accepted by the Athlete, and the 1 (2) July 2018, date of the beginning of her additional two (2) year period of ineligibility.

IX. COSTS

96. Pursuant to article R64.4 of the Code:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include: the CAS Court Office fee; the administrative costs of the calculated in accordance with the CAS scale; the costs and fees of the arbitrators; the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale; a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

97. Article R64.5 of the Code provides that:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

98. Pursuant to Rule 38.3 of the 2016-2017 IAAF Rules, in a case like the one at hand, "*the hearing [by the CAS] shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42*".

99. As regards the arbitration costs, the IAAF, primarily, requested that these costs be born entirely by the First Respondent pursuant to Rule 38.3 of the 2016-2017 IAAF Rules.

100. Given the clear wording of Rule 38.3 of the 2016-2017 IAAF Rules, the Sole Arbitrator determines that the costs of arbitration, to be calculated by the CAS Court Office and communicated separately to the Parties, shall be borne entirely by the First Respondent.

101. As a general rule, the CAS grants the prevailing party a contribution towards the legal fees and other expenses incurred in connection with the proceedings. In the present matter, having taken into consideration the complexity of the case, the outcome of the proceedings, the conduct and the financial resources of the Parties, the Sole Arbitrator finds that the First and Second Respondent shall each bear their own costs, if any, and that the First and Second Respondent shall jointly and severally pay a total amount of CHF 2'000 (two thousand Swiss Francs) towards the legal fees and other expenses of the IAAF in connection with these proceedings.

102. The present Award may be appealed to CAS pursuant to Rule 42 of the 2016-2017 IAAF Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by the filed by the International Association of Athletics Federations (IAAF) with the Court of Arbitration for Sport (CAS) against the Russian Athletics Federation (RUSAF) and Ms. Vera Ganeeva on 26 April 2018 is admissible and partially upheld.

2. Ms. Vera Ganeeva committed anti-doping rule violations according to Rule 32.2(b) of the 2012-2013 IAAF Competition Rules.

3. Ms. Vera Ganeeva is sanctioned with an additional period of ineligibility of two (2) years starting on 2 July 2018.

4. All competitive results obtained by Ms. Vera Ganeeva from 25 July 2012 through to 2 August 2014, and between 2 July 2018 and the notification of the present Award shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.

5. The costs of this arbitration, to be determined and served upon the Parties by the CAS Court Office, shall be borne by the Russian Athletics Federation (RUSAF).

6. The Russian Athletics Federation (RUSAF) and Ms. Vera Ganeeva shall each bear their own costs and are jointly and severally ordered to pay to the International Association of Athletics Federations (IAAF) the amount of CHF 2'000 (two thousand Swiss Francs) as a contribution towards the International Association of Athletics Federations' legal fees and expenses incurred in relation to the present proceedings.

7. All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 31 January 2019

THE COURT OF ARBITRATION FOR SPORT

Mr Jacques Radoux
Sole Arbitrator