

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte

CAS 2021/A/7662 Mariya Lasitskene v. World Athletics

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr James Drake Q.C., Barrister in London, United Kingdom
Arbitrators: Mr André Brantjes, Attorney-at-Law in Amsterdam, Netherlands
Mr Ulrich Haas, Professor of Law in Zurich, Switzerland

in the arbitration between

Mariya Lasitskene, Russian Federation

Represented by Mr Sergei Revovich Lisin and Mr Sergdei Anatolyevich Mishin, Attorneys-at-Law with Lisin Mishin & Partners, Moscow, Russian Federation

Appellant

and

World Athletics, Monaco

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, Attorneys-at-Law with Kellerhals Carrard, Lausanne, Switzerland, and Ms Karena Vleck, General Counsel, World Athletics, Monaco

Respondent

I. PARTIES

1. Ms Mariya Lasitskene (the “Athlete” or the “Appellant”) is a professional high jumper from Prokhladny, Republic of Karbadino Balkariya, Russian Federation.
2. World Athletics (“World Athletics” or the “Respondent”) is the international governing body for the sport of athletics, recognised as such by the International Olympic Committee. It has its seat and headquarters in Monaco. It is a signatory to the World Anti-Doping Code (“WADC”) and in compliance therewith has from time to time adopted the World Athletics Anti-Doping Rules, the latest edition coming into force on 1 January 2021 (“2021 WA ADR”). It is governed by the Council of World Athletics (the “WA Council”) (which in turn reports to the Congress of World Athletics (the “WA Congress”). World Athletics is governed by what it describes as a “Book of Rules”, which book contains its constitutional document (the “WA Constitution”) and various other rules and regulations in relation to its governance and the governance by it of the sport of athletics. World Athletics was formerly known as the International Association of Athletics Federations (“IAAF”).

II. SUMMARY OF THE CASE

3. By this appeal, the Athlete seeks, *inter alia*, a declaration that certain provisions of the 2021 WA ADR (what have been called the “Contested Provisions”) are invalid and unenforceable and that the WA Council’s decision(s) to suspend the “Authorised Neutral Athlete” (“ANA”) programme was likewise invalid and unenforceable.
4. This Award is concerned with three preliminary issues (the “Preliminary Issues”): (1) Is CAS competent and the appeal admissible? (2) Does the Athlete have standing to bring this appeal? (3) Is the appeal deemed withdrawn pursuant to Article R51 of the CAS Code on the basis that it was filed beyond by date permitted therein?
5. Set out below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced in these proceedings. While the Panel has considered all the facts, allegations, arguments and evidence submitted by the Parties, reference is made in this Award only to the submissions and evidence necessary to explain the reasoning and decision.

III. FACTUAL BACKGROUND

A. Background Facts

6. The factual background to these proceedings is now notorious and need not be repeated here in any detail; for a full account of the history see CAS 2020/O/6689. The following is therefore but a brief account.
7. In November 2016, exercising its power to do so pursuant to the WA Constitution, the WA Council suspended the Russian Athletics Federation (“RusAF”) as a member of World Athletics with immediate effect. The suspension arose from the matters set forth

in the report prepared by the Independent Commission chaired by Mr Richard Pound QC established to investigate allegations of systemic doping practices within RusAF (then known as the All-Russia Athletics Federation).

8. In 2016, World Athletics introduced an ANA programme which, subject to various conditions, allowed Russian athletes to compete as neutrals in international competitions during the period of suspension of RusAF and pending reinstatement.
9. In 2018, in breach of the WA ADR, RusAF fabricated and deployed false evidence in defence of the whereabouts violations of a Russian athlete, Danil Lysenko, and thereafter took steps to conceal its conduct by destroying evidence and misleading investigators. Charges in this respect were brought against RusAF, which charges were formally admitted by RusAF in March 2020.
10. Accordingly, acting pursuant to Rule 16.2 of the WA ADR, on 12 March 2020 the WA Council imposed a number of sanctions on RusAF including (1) that RusAF pay a fine of USD 10,000,000 and reimburse World Athletics the costs of the investigation to be paid by 1 July 2020 and (2) limited to ten (10) the number of Russian athletes that could compete as ANAs in the following competitions in 2020: Olympic Games, World Series events and the European Championships (with no such cap on other events) It was also decided that a new ANA process would be put in place (with revised criteria). (This decision of 12 March 2020 will be referred to herein as the “12 March 2020 Decision”.)
11. RusAF failed to pay the sums due and, in response, in July 2020 the WA Council recommended to WA Congress that RusAF be expelled from membership. This decision was suspended but would revive immediately if RusAF failed (1) to pay the sums due by 15 August 2020, (2) to submit a comprehensive ‘reinstatement plan’ by 31 August 2020, (3) to make any changes thereto as required by World Athletics by 30 September 2020 and (4) to implement the reinstatement plan. The WA Council also decided that it would not grant ANA status to any Russian athlete pending these matters.
12. RusAF duly paid the sums due and submitted a reinstatement plan. World Athletics took the view that the plan was inadequate. In the event, RusAF was granted an extension of time in respect of its reinstatement plan and on 2 December 2020 the WA Council decided that it would consider RusAF’s progress in this respect at its meeting in March 2021. (This decision of 2 December 2020 will be referred to herein as the “2 December 2020 Decision”.)
13. On (or about) 1 January 2021, principally in order to accord with the 2021 WADC promulgated by WADA, World Athletics introduced the 2021 WA ADR, effective as at that date and superseding the 2019 WA ADR.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. By a Statement of Appeal dated 21 January 2021 submitted in accordance with Article R47 of the Code of Sports-related Arbitration (the “CAS Code”), the Athlete appealed to CAS in respect of “certain provisions” of Section 16 of the 2021 WA ADR, namely

Rules 16.2.6, 16.2.7, and 16.2.8 (these paragraph numbers take account of an error in the paragraph sequencing in the copy of the 2021 WA ADR relied upon by the Athlete) (the “Contested Provisions”). The Athlete sought a declaration that these Contested Provisions were invalid and unenforceable. The Athlete also requested that the matter be referred to a sole arbitrator.

15. The Athlete filed her Appeal Brief on 5 February 2021 in accordance with Article R51 of the CAS Code, by which the Athlete (a) appealed to CAS in respect of the Contested Provisions and (b) sought a further declaration that the 12 March 2020 Decision and the 2 December 2020 Decision were likewise invalid and unenforceable. The Athlete also made application for certain provisional measures.
16. On 8 February 2021, the Respondent objected to the Athlete’s request for a sole arbitrator and proposed that this procedure be referred to a three-member panel. On the same date, the CAS court Office invited the Respondent to respond to the Athlete’s request for provisional measures.
17. On 15 February 2021, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed to the Parties that this procedure would be referred to a three-member panel. The Athlete was subsequently invited to nominate an arbitrator from the list of CAS arbitrators.
18. On 17 February 2021, the Respondent responded to the Athlete’s request for preliminary measures and in doing so objected to the admissibility of the appeal and foreshadowed an application on its part for the determination of certain preliminary issues.
19. On 19 February 2021, the Athlete nominated Mr André Brantjes as arbitrator.
20. On 24 February 2021, the Respondent nominated Prof. Dr Ulrich Haas as arbitrator.
21. On 26 February 2021, the Athlete challenged the Respondent’s nomination of Prof. Haas. The challenge was referred to ‘The Challenge Commission of the International Council of Arbitration for Sport’ and in a decision dated 10 May 2021 the challenge was dismissed.
22. By letter dated 9 April 2021, the Respondent raised each of the Preliminary Issues (as defined above) and requested that the said issues be determined in a bifurcated hearing.
23. The CAS Court invited the Athlete to comment on the Respondent’s application for the determination of the Preliminary Issues, which she did by letter dated 22 April 2021. In summary, the Athlete contended that the matter was admissible, she did have standing, and that it was filed in time; and, further, that the request for bifurcation should be rejected.
24. On 3 May 2021, the President of the Appeals Arbitration Division rejected the Athlete’s application for preliminary measures on the basis that the Athlete did not meet the requirements set forth in Article R37 of the CAS Code.

25. On 18 May 2021, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Mr James Drake QC as the President of the Panel, as well as the nomination of Mr André Brantjes and Mr Ulrich Haas as co-arbitrators.
26. On 25 May 2021, the CAS Court Office, on behalf of the Panel, informed the Parties that the Preliminary Issues identified by the Respondent would be determined as preliminary issues (and that, accordingly, the Respondent's time to Answer would remain suspended).
27. The Panel also decided that there would be a remote hearing in respect of the Preliminary Issues (only), which hearing which was listed for 11 June 2021 to meet the convenience of the Parties and the Panel.
28. A remote hearing took place (via Webex) on Friday, 11 June 2021, participated in by the following:
 - a. The Panel:
 - i. Mr James Drake Q.C., President
 - ii. Mr André Brantjes, Attorney-at-Law in Amsterdam, Arbitrator
 - iii. Mr Ulrich Haas, Professor of Law in Zurich, Switzerland
 - b. The Appellant:
 - i. Mr Sergei Revovich Lisin, Counsel
 - c. The Respondent:
 - i. Mr Ross Wenzel, Counsel
 - ii. Mr Nicolas Zbinden, Counsel
 - iii. Ms Karena Vleck, General Counsel, Respondent
 - d. CAS Court Office:
 - i. Mr Fabien Cagneux, Counsel
29. On 15 and 16 June 2021, respectively, the Parties signed and returned the Order of Procedure, which (inter alia) stated as follows:

“The Appellant relies on Article 84.3 of the World Athletics Constitution as conferring jurisdiction on CAS. Article 84.3 provides that: “84.3 Final decisions made by World Athletics under this Constitution may be appealed exclusively to the CAS (Appeal Arbitration Division) which will resolve the dispute definitively in accordance with the

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CAS Code of Sports-related Arbitration.”. The Respondent does not object to the jurisdiction of CAS.”

30. In addition, the Order of Procedure states that as follows:

“The appointed Panel shall decide the Preliminary Issues as an Arbitral Tribunal and render an award in compliance with the Code and the terms and conditions set out in this document.”

V. SUBMISSIONS OF THE PARTIES

31. As made plain above, this Award deals solely with the determination of the Preliminary Issues. Nevertheless, in order to frame the Preliminary Issues in their context it is necessary to outline the Athlete’s case generally.

A. The Athlete’s Submissions on the Merits

32. By her Appeal Brief, the Athlete appeals against (a) the Contested Provisions and (b) the 12 March 2020 Decision and the 2 December 2020 Decision.

33. The Contested Provisions are found within Rule 16 of the 2021 WA ADR. In its entirety, Rule 16 provides as follows:

“16. Sanctions Against Member Federations

16.1 Where any of the following circumstances apply, the Council shall have authority to impose one or more of the sanctions referred to in Rule 16.2 on any Member Federation and to do so subject to any conditions it sees fit:

16.1.1 the Integrity Unit Board refers a Member Federation's breach of its obligations to the Council under Rule 15.9.3;

16.1.2 three or more Anti-Doping Rule Violations have been committed by International-Level Athletes, Athlete Support Personnel or other Persons from a Member Federation within a period of 1 year starting from the date of the first Anti-Doping Rule Violation and, having regard to the number and seriousness of the violations, the number of Athletes competing internationally from the Member Federation and the relevant time frame concerned, the Council is of the opinion, in its entire discretion, that the Member Federation has thereby brought World Athletics into disrepute.

16.2 In accordance with Rule 16.1, the Council may impose the following sanctions:

16.2.1 provisionally suspend the Member Federation: (a) for a fixed period provided that the period is no longer than the period to the next Ordinary Congress meeting; or (b) an indefinite period dependent on the satisfaction of terms and conditions imposed by Council, provided that the period is no longer than the period to the next Ordinary Congress meeting;

16.2.2 set specific terms or conditions to be met or steps to be undertaken to the satisfaction of Council;

16.2.3 caution or censure the Member Federation;

16.2.4 impose a fine against the Member Federation;

16.2.5 withhold grants or subsidies from the Member Federation;

16.2.6 exclude the Member Federation's Athletes, Athlete Support Personnel and/or Officials and Member Federation Officials from any International Competition or any World Athletics position or body;

16.2.7 remove or deny accreditation of, or other benefits to, Athletes, Athlete Support Personnel and/or Officials (who are Citizens of the Member Federation Country) and Member Federation Officials, for any International Competitions and other World Athletics events and activities;

16.2.8 limit the number of the Member Federation's Athletes, Athlete Support Personnel and other Persons permitted to compete in any one or more International Competition;

16.2.9 require the Member Federation to reimburse World Athletics/the Integrity Unit for all costs incurred in pursuing the matter;

16.2.10 impose any other sanction it may deem to be appropriate."

34. The provisions appealed against are (taking into account the mis-numbering) as follows:

16.2 In accordance with Rule 16.1, the Council may impose the following sanctions:

...

16.2.6 exclude the Member Federation's Athletes, Athlete Support Personnel and/or Officials and Member Federation Officials from any International Competition or any World Athletics position or body;

16.2.7 remove or deny accreditation of, or other benefits to, Athletes, Athlete Support Personnel and/or Officials (who are Citizens of the Member Federation Country) and Member Federation Officials, for any International Competitions and other World Athletics events and activities;

16.2.8 limit the number of the Member Federation's Athletes, Athlete Support Personnel and other Persons permitted to compete in any one or more International Competition;

35. The Athlete's case in respect of these Contested Provisions may be summarised in the following way.

- a. The Contested Provisions create “*adverse consequences for the athletes, but those consequences do not derive from any misconduct by said athletes*”. The Contested Provisions “*represent sanctions that prejudice her rights as an international athlete*” because: (a) they lack “*legal certainty*”; (b) they “*lack ... proportionality*”; (c) they “*infringe on the Athlete’s right to become eligible for international competitions pursuant to Article 3.2 of the World Athletics Eligibility Rules that enable [the WA Council] to grant exceptional eligibility to the athletes of a suspended national federation*”. The Contested Provisions are therefore invalid and unenforceable.
- b. The Contested Provisions were approved by a decision of the WA Council (the “2021 ADR Decision”). The Decision amounts to a “*final decision*” as that term is used in Article 84.3 of the WA Constitution, which provides as follows:

“*84.3 Final decisions made by World Athletics under this Constitution may be appealed exclusively to the CAS (Appeal Arbitration Division) which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration.*”
- c. The 2021 ADR Decision also amounts to a decision pursuant to Article R47 of the CAS Code, which provides as follows:

“*R47. Appeal. An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.* ...”
- d. It follows that the Athlete may appeal the 2021 ADR Decision to CAS.
- e. Article 84.4 of the WA Constitution imposes a deadline for the appeal of 21 days from the date of the 2021 ADR Decision. It provides as follows:

“*84.4 ... Any appeal under Article 84.3 must be filed with the CAS within twenty-one (21) days of the appealing party’s receipt of the written, reasoned decision of World Athletics in question.*”
- f. The 2021 ADR Decision is not publicly available, and nor was it sent to or received by the Athlete, but the 2021 WA ADR first appeared on the World Athletics website on 1 January 2021 so that the Athlete is entitled to proceed on the basis that the 21-day period for an appeal to CAS against the 2021 ADR Decision began on 1 January 2021.
- g. The 2021 ADR Decision is underpinned by the two earlier decisions, the 12 March 2020 Decision and the 2 December 2020 Decision, each of which, in effect, decided to suspend the operation of the ANA programme.

36. On the strength of those submissions, the Athlete seeks the following relief on this appeal:

“122 The Appellant requests the CAS to:

(i) declare the Contested Provisions invalid and unenforceable;

(ii) declare the World Athletics’ Council decisions of 12 March 2020 and 2 December 2020 to suspend the ANA process invalid and unenforceable, and therefore to order World Athletics to resume the ANA process as of date of the award;

(iii) order World Athletics to revise the ANA process, specifically the Eligibility Rules, to ensure that the rights of the athletes affiliated to RusAF are not less favorable than the rights of Russian athletes pursuant to the exclusion consequences under the RUSADA Award;

(iv) order the Respondent to pay the Appellant her legal fees and costs associated with this appeal; and

(v) order such further and other relief as may be appropriate and just.”

B. The Respondent’s Submissions on the Preliminary Issues

37. The obligation on the part of World Athletics to file its Answer has been suspended so that it has, as yet, made no submissions in the matter generally. Instead, at this juncture, by letter dated 9 April 2021 and as supplemented by oral submissions at the hearing, World Athletics submits that the Athlete’s appeal is *“flawed and illegitimate”* and that the appeal should be dismissed on the following three threshold grounds.
38. It is first submitted that the appeal is *“manifestly inadmissible”* on the basis that it outwith the period of time set forth in the WA Constitution. Article 84.4 of the WA Constitution is set forth above. For present purposes, it provides that *“Any appeal under Article 84.3 must be filed with the CAS within twenty-one (21) days of the appealing party’s receipt of the written, reasoned decision of World Athletics in question.”* The Respondent submits as follows:
- a. The Contested Provisions have been included in the WA ADR since *“at least”* 1 January 2019 and that, while changes were made to the Contested Provisions in the 2021 WA ADR, those changes are immaterial. If therefore the Athlete wished to challenge these provisions, she should have done so long ago, and it is not open to her to *“use the mere fact that such provisions were reproduced within the 2021 WA ADR”* to bring this challenge now.
 - b. Similarly, the 21-day period of time to challenge the two earlier decisions, the 12 March 2020 Decision and the 2 December 2020 Decision, expired long ago and any appeal in respect of these decisions is inadmissible.

39. Second, it is submitted by the Respondent that the Athlete lacks standing. The Respondent relies on (uncontroversial) CAS jurisprudence to the effect that, in order to have standing, a party must have a “*sufficient*” or “*tangible*” interest in the matter being appealed: see e.g., CAS 2007/A/1392 and CAS 2008/A/1726. It is said that none of the Contested Provisions or the 12 March 2020 Decision or the 2 December 2020 Decision has been applied against the Athlete (or indeed anyone) and none has affected her legal rights in any way. She therefore lacks a sufficient or tangible interest, and has no standing to bring this appeal.
40. The third ground is that the Appeal Brief was filed out of time, beyond the deadline set forth in Article R51 of the CAS Code. It is submitted that the Athlete’s case is that the 2021 WA ADR (which contain the Contested Provisions) were published, at the latest, on 3 January 2021 on the Respondent’s website. Accordingly, Article R51 of the CAS Code required the Appeal Brief to be filed within the 21 days allowed for the Statement of Appeal and the 10-day period allowed for the Appeal Brief, i.e., 31 days from 3 January 2021, or 3 February 2021. The Appeal Brief was filed on 5 February 2021, and was therefore out of time -- with the consequence, pursuant to Article R51, that the appeal is deemed withdrawn.

C. The Athlete’s Submissions on the Preliminary Issues

41. The Athlete submits that the appeal is admissible, that she has standing to bring the appeal, and that the appeal is either within time or time can and should be extended to allow the appeal.
42. As to admissibility, the Athlete makes the following submissions:
- a. The Respondent’s argument is “*purely technical*”.
 - b. The 2021 WA ADR were promulgated on 1 January 2021. Insofar as they contain objectionable provisions they are subject to challenge and the fact that some of the rules may have appeared in earlier editions of the ADR is irrelevant. Each time a federation adopts new rules it has an obligation to ensure that each of the said new rules is valid and enforceable.
 - c. In any event, the changes made to the Contested Provisions in the 2021 WA ADR are material so as to invite a fresh challenge.
 - i. Rule 16.2.6 was revised to include athlete support personnel that, in the Athlete’s case, includes her coach.
 - ii. Rule 16.2.7 as now worded “*impacts directly [the Athlete] and relevant support personnel (the clause may be implemented after [the Athlete] was granted ANA status at any time before the commencement of a sporting event)*”.
43. As to standing, this is said on behalf of the Athlete:

- a. It is accepted that World Athletics has not invoked the Contested Provisions against anyone.
 - b. The 12 March 2020 Decision was however confirmed by the WA Council on 18 March 2021.
 - c. The Athlete is an international-level athlete with “*the highest chances*” among Russian athletes to qualify to compete in international competitions and the Contested Provisions may prevent her from doing so in the future, as they did in 2020.
 - d. It is no answer to say that the Athlete may in fact be granted ANA status in 2021 (and thus be free to compete in Tokyo) because, should the WA Council determine that RusAF is in breach of its anti-doping obligations under the 2021 WA ADR, it may (a) exclude the Athlete from international competition, (b) deny her accreditation, or (c) limit the number of Russian athletes free to compete.
 - e. The 12 March 2020 Decision suspending the ANA program did in fact prevent the Athlete from applying for ANA status.
44. As to the appeal being out of time, the Athlete makes the following submissions:
- a. The CAS letter of 1 February 2021 established a 15-day time limit for the filing of the Appeal Brief.
 - b. There was “*logic*” in this 15-day period because, in the same letter, the CAS Court Office directed that the Respondent produce the decision of the WA Council approving the adoption of the 2021 WA ADR and to do so within five days; i.e., as a result the 10-day period that applied via Article R51 of the CAS Code did not commence to run until such time as the document had been disclosed.
 - c. In any event, if the 15-day period was a “*mistake*” by the CAS Court Office and was based on the 2019 WA ADR which provided for such a 15-day period, it is of no assistance to the Respondent to invoke the new Article 13 of the 2012 WA ADR which makes no such provision because the Athlete is not challenging an appeal under the 2021 WA ADR.
 - d. The procedural rules applicable to this appeal are those set forth in Article 84 of the WA Constitution, Article 84.4 of which provides for a deadline for the appeal of 21 days from the date of the relevant decision.
 - e. Article R51 of the CAS Code provides for a period of time of 10 days after the expiration of the 21-day period of time allowed for via R47 and/or Article 84.4 of the WA Constitution. If the Appeal Brief was filed outside that time then Article R51 of the CAS Code contains an implicit power on the part of the Panel to grant an extension of time.

- f. There is no suggestion of any prejudice on the part of the Respondent as a result of any lateness.

VI. JURISDICTION OF CAS

45. Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Player has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

46. The appeal has been brought (expressly) pursuant to Article 84.3 of the WA Constitution which provides that:

“84.3 Final decisions made by World Athletics under this Constitution may be appealed exclusively to the CAS (Appeal Arbitration Division) which will resolve the dispute definitively in accordance with the CAS Code of Sports-related Arbitration.”

47. To put that provision in context, the following provisions of Article 84 are also noted:

“84.4 Any dispute submitted to the CAS under Article 84.1.b. must be filed either within five (5) days of the date of the dispute first arising or within five (5) days of any failure to resolve the dispute in accordance with Article 84.1.a (whichever the case may be). Any appeal under Article 84.3 must be filed with the CAS within twenty-one (21) days of the appealing party's receipt of the written, reasoned decision of World Athletics in question.

84.5 Pending resolution of the appeal by the CAS, the decision being appealed shall remain in full force and effect unless the CAS orders otherwise.

48. The Panel, therefore, confirms that CAS has jurisdiction to decide this appeal, as is common ground between the Parties (as confirmed in the Order of Procedure).

VII. APPLICABLE LAW

49. Article R58 of the CAS 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.

50. In this appeal, Article 84.6 of the WA Constitution provides as follows:

84.6 An appeal before the CAS shall be governed by this Constitution and the Rules and Regulations, and on a subsidiary basis by Monegasque law. The appeal proceedings shall be conducted in English unless the parties agree otherwise.”

51. It follows that this appeal is to be determined in accordance with the terms and provisions of the WA Constitution and, subsidiarily, the law of Monaco.

VIII. THE PRELIMINARY ISSUES

52. As a threshold matter, it is noted by the Panel that the principal appeal is against the Contested Provisions and that, secondarily, it is said that these Contested Provisions are underpinned by the two earlier decisions of the WA Council, viz., the 12 March 2020 Decision and the 2 December 2020 Decision. It will of course be immediately apparent that these two ‘underpinning’ decisions are of some age and that, on any view, the time period for any challenge by the Athlete to these decisions has long expired. Accordingly, the Panel will focus solely on the Contested Provisions and on the related decision of World Athletics in adopting the 2021 WA ADR (i.e., the 2021 ADR Decision) in (so it is to be assumed) January 2021.

53. With that preamble, there are three preliminary issues to be determined:

- a. Is the appeal inadmissible?
- b. Does the Athlete have standing to bring this appeal?
- c. Is the appeal deemed withdrawn pursuant to Article R51 of the CAS Code on the basis that it was filed beyond by date permitted therein?

54. For reasons that will become clear, the Panel deals with the second issue first.

A. Does the Athlete have standing to bring this appeal?

55. This appeal is not an appeal brought by a member federation against a decision taken by World Athletics pursuant to the terms of the WA Constitution. Nor is this appeal an appeal against the imposition of any sanction by World Athletics against a member federation pursuant to Rule 16 of the 2021 WA ADR or an appeal by an athlete against a sanction imposed against him or her pursuant to the 2021 WA ADR generally. It is instead a challenge by an athlete against a decision made by the WA Council for and on behalf of World Athletics to make provision for the imposition of sanctions against member federations in the circumstances and on the conditions set forth in Rule 16 of the 2021 WA ADR.

56. The Athlete is not a direct member of World Athletics but, rather, an indirect member in the sense that she is a member of a (suspended) member of World Athletics, RusAF. In that capacity, does she have standing to challenge the WA Council decision to adopt the Contested Provisions?
57. The issue of standing is, as is well-settled, a question of the merits of the dispute and for that reason differs from objections to jurisdiction and admissibility (see, e.g., CAS 2018/A/5888; CAS 2011/A/2474; Lewis & Taylor, *Sport: Law and Practice*, 4th edition). The Athlete brings her challenge not pursuant to the 2021 WA ADR, but pursuant to the WA Constitution – and in particular pursuant to Article 84.3 of the WA Constitution (see above). Whether or not, therefore, the Athlete does have standing is a matter to be determined according to the law applicable to the appeal, which (as per Article 84.4 of the WA Constitution, also see above) is the WA Constitution and, subsidiarily, Monegasque law.
58. The first consideration is therefore the WA Constitution itself. As far as the Panel has been able to determine, it says nothing at all about the ability of an athlete to mount a challenge against a decision taken by the WA Council. It is instead, in this context at least, concerned with the rights and obligations and relationship as between the Respondent on the one hand and its member federations on the other. The Parties did not identify any provision within the WA Constitution that might be regarded, expressly or impliedly, as providing the basis for a challenge by an athlete (as opposed to a member federation) against a decision taken by the WA Council bearing upon a member federation. The Panel therefore proceeds on the basis that the WA Constitution is silent on the issue.
59. That being so, one must look to Monegasque law. The difficulty for the Panel is that the Parties did not address (at all) the principles of Monegasque law in this respect. That being so, the Panel takes guidance from Swiss law and CAS jurisprudence to which both Parties referred at the hearing. Furthermore, in view of the fact that the Parties were specifically requested by the Panel to assist it on Monegasque law and taking account that the Parties have failed to do so, the Panel applies Article 16(2) of the Private International Law Act (“PILA”) by analogy. Article 16 of the PILA reads as follows:
- “(1) The content of the foreign law shall be established by the authorities on their own motion. For this purpose, the cooperation of the parties may be requested. In matters involving an economic interest, the task of establishing foreign law may be assigned to the parties.*
- “(2) Swiss law applies if the content of the foreign law cannot be established.”*
60. In order to have standing, a party must have a “sufficient” (CAS/2007/A/1392) or “tangible” (CAS/2008/A/1726) interest in the matter being appealed. The Panel in CAS 2019/A/6676 accepted as fair the following articulation of the principles of standing according to Swiss law and CAS jurisprudence:

“For the Respondent, a party has standing only if it can demonstrate that it possesses “significant” or “tangible” interest in the matter being appealed. The same test for standing has been employed by different CAS Panels under slightly different labels, be it “legal interest”, an “interest worthy of protection”, ... “legitimate interest”, or a combination thereof. Respondent argues that CAS case law requires that the party not only be “affected” by the concerned proceeding, but be “directly or legally affected” in order to have standing in appeals proceedings (CAS 2014/A/4151). Notably, CAS jurisprudence specifies that party’s direct legal rights must be violated by the appealed decision and that such party must evidence sufficient legal interest. A Panel in CAS 2015/A/4289 for example has stipulated that “purely theoretical / indirect interest is not sufficient” and the “decision being challenged must affect the appellant directly, concretely, and with more intensity than others”.”

61. The Panel in the last-mentioned case, CAS 2015/A/4289, put it this way at [132]-[134]:

“132 Regarding CAS jurisprudence, in order to have standing to sue, the appellant must have an interest worthy of protection (CAS 2013/A/3140 para. 8.3) or a legitimate interest (CAS 2015/A/3880 para. 46 with further references). This is found to exist if (i) the appellant is sufficiently affected by the appealed decision, and if (ii) a tangible interest of a financial or sporting nature is at stake (CAS 2015/A/3880 para. 46 with further references; see also to that effect CAS 2013/A/3140 para. 8.3; CAS 2014/A/3665, 3666 & 3667 para. 47; CAS 2015/A/3959 par. 143 et seqq.). According to CAS 2009/A/1880 & 2009/A/1881 para. 29, only an aggrieved party who has something at stake and thus a concrete interest in challenging a decision adopted by a sports body may appeal against that decision to CAS. Finally, the panel in CAS 2008/A/1674 para. 11 of the abstract published on the CAS website, states that “[s]ufficient interest is a broad, flexible concept free from undesirable rigidity and includes whether the Appellant can demonstrate a sporting and financial interest”.

...

134. [T]he Panel notes that both academics and the jurisprudence hold that a non-addressee of a decision only has a right to appeal in very restricted cases (ATF 131 II 649 consid. 3.1 and references). As a general rule, the appellant’s interest must be concrete, legitimate, and personal (DONZALLAZ Y., Loi sur le Tribunal Fédéral, Berne 2008, p. 909, para. 2366 and 2369, and quoted cases). A purely theoretical/indirect interest is not sufficient (ATF 133 II 353). In addition, the decision being challenged must affect the appellant directly, concretely, and with more intensity than others (ATF 131 II 649; consid. 3.1; see also CAS 2009/A/1880, 1881 par. 29). Finally, the interest must exist not only at the time the appeal is filed but also at the time when the decision is issued (ATF 137 I 296 at 4.2 p. 299; 137 II 40 at 2.1 p. 41).”

62. It is said by World Athletics that none of the Contested Provisions has been applied against the Athlete (or indeed anyone) and that is fairly conceded by the Athlete. It is also submitted by World Athletics that none of the Contested Provisions has affected her legal rights in any way. This is not accepted by the Athlete who says in response that (a) the Contested Provisions may prevent her from doing so in the future, and (b)

even if she were to be granted ANA status it may be taken away from her by World Athletics should determine that RusAF is in breach of its anti-doping obligations.

63. It is the Panel's view that these interests, though no doubt worrisome for the Athlete, do not, as a matter of law, rise to the level of sufficient or tangible or concrete interests in order to confer on the Athlete standing to sue World Athletics in respect of decisions made by it in the formulation and publication of its ADR. Her interests are entirely abstract and in the absence of a direct (or even an indirect) application of the Contested Provisions against the Athlete by World Athletics, her interest in the provisions is too attenuated. The expressed interest on the part of the Athlete at this moment in time is indeed "*purely theoretical*" and cannot suffice to provide the required foundation for standing to sue.
64. In the result, it is the Panel's determination that the Athlete has no *locus standi* to bring this appeal and the appeal must be dismissed on this ground alone.
65. The Panel does not therefore address the remaining matters.

B. Conclusion

66. In view of all the above considerations, the Panel holds and determines that the appeal brought by the Athlete should be dismissed.

IX. COSTS

67. Article R64.5 of the CAS Code states:

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.

68. The Panel, therefore, has a broad discretion in respect of the making of any costs award, which shall be exercised by reference to all the circumstances of the case including the complexity and outcome of the proceedings and the conduct and financial resources of the parties.
69. In light of Panel's determination, the Panel exercise its broad discretion in respect of costs so as to order that the arbitration costs shall be borne by the Athlete in full. Furthermore, given that the Respondent was represented by an external counsel and that a hearing was held in this matter, the Athlete shall pay to World Athletics an amount of CHF 3,000 as contribution towards its legal fees and other expenses incurred during these arbitral proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

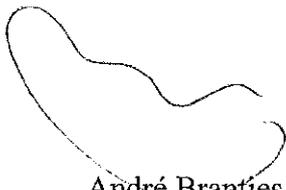
1. The appeal filed on 21 January 2021 by Ms Mariya Lasitskene against World Athletics is dismissed.
2. The costs of the arbitration, to be served on the Parties by the CAS Court Office by separate letter, shall be born entirely by Ms Mariya Lasitskene.
3. Ms Mariya Lasitskene is ordered to pay the World Athletics a total amount of CHF 3,000 (three thousand Swiss Francs) as contribution towards the expenses incurred in connection with these arbitration proceedings.
4. All other and further claims or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 8 November 2021

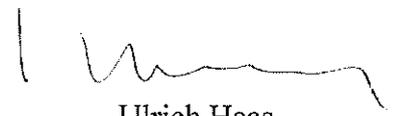
THE COURT OF ARBITRATION FOR SPORT



James Drake QC
President of the Panel



André Brantjes
Arbitrator



Ulrich Haas
Arbitrator