

Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2020/O/6759 World Athletics v. Russian Athletic Federation & Natalya Antyukh**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: The Hon. Franco Frattini, Judge, Rome, Italy

*Ad hoc* Clerk: Mr Yago Vázquez Moraga, Attorney-at-Law, Barcelona, Spain

**in the arbitration between**

**World Athletics**, Monaco

Represented by Messrs Ross Wenzel and Nicolas Zbinden, Attorneys-at-Law with Kellerhals Carrard in Lausanne, Switzerland

**Claimant**

**Russian Athletics Federation**, Moscow, Russia

**First Respondent**

**Ms Natalya Antyukh**, Saint Petersburg, Russia

Represented by Dr Daria Solenik, Attorney-at-Law with SwissLegal Rouiller & Associés Avocats in Lausanne, Switzerland

**Second Respondent**

\* \* \*

## **I. PARTIES**

1. World Athletics (the “Claimant” or “WA”) is the international federation governing the sport of Athletics worldwide. WA is recognized as such by the International Olympic Committee (IOC”). Its seat and headquarters are in Monaco.
2. The Russian Athletics Federation (the “First Respondent” or “RUSAF”) is the national federation governing the sport of Athletics in Russia, with its registered seat in Moscow, Russia. RUSAF is the relevant member federation of WA for Russia, but its membership has been suspended since 26 November 2015.
3. Ms Natalya Antyukh (the “Second Respondent”, “Ms Antyukh” or the “Athlete”) is a retired International-Level Russian athlete who competed in the 400-metre and 400-metre hurdle events. Ms Antyukh won a gold medal in 400-metre hurdle event at the 2012 London Olympic Games and further medals at the 2009 and 2011 World Championships, where she won a bronze medal for both the 4x400-metre relay and in the 400-metre hurdle event. Mr Antyukh retired from professional sport and competition on 5 February 2017.

## **II. BACKGROUND FACTS**

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed below based on the Parties’ written submissions, the evidence filed with these submissions, and the statements made by the Parties and the evidence taken at the hearing held in the present case. Additional facts and allegations found in the Parties’ written submissions and the evidence adduced may be set out, where relevant, in connection with the legal discussion that follows. The Sole Arbitrator refers in this Award only to the submissions and evidence it considers necessary to explain his reasoning. However, the Sole Arbitrator has considered all the factual allegations, legal arguments and evidence submitted by the Parties and deemed admissible in the present proceedings.

### **A. The Russian doping scheme**

5. On 19 May 2016, following certain allegations of systemic doping practices in Russia that Dr Grigory Rodchenkov (“Mr Rodchenkov”), the former director of the World Anti-Doping Agency (“WADA”) accredited testing laboratory of Moscow, made to the New York Times on May 12th 2016, WADA announced the appointment of Prof Richard McLaren (“Prof McLaren”) as an Independent Person (the “IP”) to conduct an independent investigation of these allegations.
6. On 18 July 2016, Prof McLaren issued his IP Report (the “First McLaren Report”), in which he concluded that a systemic cover-up and manipulation of the doping control

process existed in Russia. Prof McLaren summarized the key findings of his report as follows:

*“Key Findings*

- 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 athlete’s analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both Moscow and Sochi Laboratories.”*
7. On 9 December 2016, Prof McLaren issued a Second IP Report (the “Second McLaren Report”), in which he identified a large number of athletes who appeared to have been involved in or benefited from the systematic and centralised cover-up and manipulation of the doping control process. Furthermore, the Second McLaren Report confirmed the findings of the First McLaren Report in the following terms:
- “1. An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, CSP and the Moscow Laboratory, along with the FSB for the purposes of manipulating doping controls. The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report.*
  - 2. This systematic and centralised cover up and manipulation of the doping control process evolved and was refined over the course of its use at London 2012 Summer Games, Universiade Games 2013, Moscow IAAF World Championships 2013, and the Winter Games in Sochi in 2014. The evolution of the infrastructure was also spawned in response to WADA regulatory changes and surprise interventions.*
  - 3. The swapping of Russian athletes’ urine samples further confirmed in this 2nd Report as occurring at Sochi, did not stop at the close of the Winter Olympics. The sample swapping technique used at Sochi became a regular monthly practice of the Moscow Laboratory in dealing with elite summer and winter athletes. Further DNA and salt testing confirms the technique, while others relied on DPM.*

4. *The key findings of the 1st Report remain unchanged. The forensic testing, which is based on immutable facts, is conclusive. The evidence does not depend on verbal testimony to draw a conclusion. Rather, it tests the physical evidence and a conclusion is drawn from those results. The results of the forensic and laboratory analysis initiated by the IP establish that the conspiracy was perpetrated between 2011 and 2015.*”
8. The First and the Second McLaren Reports (together referred to as the “McLaren Reports”) acknowledged several counter-detection methods that the Moscow Laboratory allegedly applied, including *inter alia*:

▪ The “Disappearing Positives Methodology” (“DPM”):

The DPM was operated from late 2011 to August 2015. Through this method, when an athlete’s first analytical screen revealed an Adverse Analytical Finding (“AAF”) on his/her A sample, the details of the athlete would be recorded (the “Athlete Profile”) and communicated to the Russian Minister of Sport through a Liaison Person (i.e. Ms Natalia Zhelanova, Mr Alexey Velikodniy and Dr Avak Abalyan). Once informed, the Deputy Minister would issue an order for that sample that would be transmitted to the Moscow Laboratory through the Liaison Person. The order could consist of the instruction to “SAVE” or to “QUARANTINE” the Athlete in the following terms:

- In the first case (“SAVE”), the Moscow Laboratory would report the sample as negative in the Anti-Doping Administration & Management System (ADAMS). The Laboratory would also manipulate their Laboratory Information Management System (“LIMS”) to reflect this false negative result. After this manipulation of the registries, anyone who reviewed the LIMS or ADAMS systems would not detect this false entry.
- In the second case (“QUARANTINE”), the results would not be manipulated and the Moscow Laboratory would complete the analysis in accordance with the procedure established by the International Standard for Laboratories (“ISL”), reporting the result in the ordinary manner.

▪ The “Washout Testing” method:

The Washout Testing method started in 2012 in preparation for the London Olympics. Washout testing was used to establish whether athletes on a doping program were likely to test positive at the Games and to ensure that athletes would not be detected by doping control analysis at the Games. In line with this objective, at that time Dr Rodchenkov had secretly developed a cocktail of drugs with a very short detection period (the so-called “Duchess Cocktail”), mainly composed of oxandrolone, methenolone and trenbolone, to help athletes dope and evade doping

control processes. The Duchess Cocktail was taken by athletes who also used other doping protocols and substances.

Through the pre-competition testing, the Moscow Laboratory monitored if a “dirty” athlete would test “clean” at an upcoming competition. Weekly sample collections and testing of those samples were done to monitor whether athletes would likely test positive at the London Games. In case of a positive initial testing procedure (“ITP”) showing the presence of prohibited substances, the Moscow Laboratory would record it on the Washout list but would report the samples as negative in ADAMS. In addition, the Moscow Laboratory developed a schedule to keep track of the athletes who were tested which included their corresponding results (the “London Washout Schedules”). This schedule was updated regularly when new Washout samples arrived in the Laboratory for testing.

Following the London Olympics, the weaknesses of the Washout Testing method became evident due to an unexpected request that WADA made to the Moscow Laboratory. At that time, Russian athletes were providing samples in official doping control Bereg kits. WADA requested the Moscow Laboratory provide A and B bottles of 67 samples collected between May and July 2012 across different sporting disciplines and send them to the WADA accredited laboratory in Lausanne. Each of the requested 67 samples had been analysed by the Moscow Laboratory, and those that were positive for prohibited substances in the ITP had been reported negative in ADAMS. Dr Rodchenkov knew that 10 athlete’s samples on the list were dirty. Given that the Moscow Laboratory had clean urine stored for only 8 of these athletes, the evening following WADA’s request Dr. Rodchenkov swapped the corresponding 8 dirty samples by replacing the urine in the A bottles with the athletes’ own clean urine. As the B bottles were sealed, he could not swap out the urine contents in these bottles. For this reason, in order to make both samples look similar, he diluted the urine of the A samples with water, adding salt, sediment or Nescafe granules when needed, in order to match the specific gravity and appearance of the dirty B samples.

This circumstance evidenced the weakness of the DPM, as it would only work in case the testing samples misreported in ADAMS would remain within the control of the Moscow Laboratory and later destroyed. However, given that the Bereg Kits were numbered and could be audited, seized and tested, the Moscow Laboratory realised that it was a matter of time before it was uncovered that the contents of samples bottles did not match the ADAMS entries.

In this context, by February 2013 the Russian Federal Security Service (FSB) had developed a sample swapping technique that permitted the removal and replacement of the cap of the sealed B sample bottles, which would allow the

replacement of the dirty samples with clean urine that was stored in a “clean urine bank” created in the Moscow Laboratory.

Thereafter, the Washout Testing method was no longer conducted in the official doping control kits (i.e. the Bereg bottles) but in non-official collection containers instead (like plastic bottles) where the name of the athlete at stake would be written to identify the particular sample. This “under the table” system consisted of collecting pre-competition Washout samples for testing at regular intervals and subsequently testing those samples for quantities of prohibited substance to determine the rate at which those quantities were declining so that there was certainty the athlete would test “clean” in competition.

The Moscow Laboratory also produced schedules (the “Moscow Washout Schedules”), which Dr Rodchenkov updated on a regular basis to keep track of the athletes who were participating in this washout testing scheme.

9. On 2 December 2017, the IOC Disciplinary Commission issued a report (the “Schmid Report”) confirming the existence of “*systemic manipulation of the anti-doping rules and system in Russia*”. In this regard, “*The IOC DC noted that the system progressed along with the evolution of the anti-doping technologies: initially the DPM was based on cheating in the reporting mechanism ADAMS, subsequently it escalated into a more elaborated method to report into ADAMS by creating false biological profiles; ending with the tampering of the samples by way of swapping “dirty” urine with “clean” urine. This required a methodology to open the BEREK-KIT® bottles, the constitution of a “clean urine bank” and a tampering methodology to reconstitute the gravity of the urine samples.*”
10. On 5 December 2017, the IOC suspended the Russian Olympic Committee with immediate effect.
11. On 13 September 2018, the Russian Ministry of Sport “*fully accepted the decision of the IOC Executive Board of December 5, 2017 that was made based on the findings of the Schmid Report*”.

**B. The notification from the Athletics Integrity Unit of WA to the Athlete of an Assertion of an Anti-Doping Rule Violation**

12. On 31 May 2019, the Athletics Integrity Unit of WA (the “AIU”) informed the Athlete that it had decided to assert one or more anti-doping rule violations against her, in the context of the investigations conducted by Prof McLaren. In particular, the assertion of the Anti-Doping Rule Violation (“ADRV”) was based on the fact that four samples on the Moscow Washout Schedules were listed as belonging to the Athlete, dating from 30 June and 6, 14 and 25 July 2013. In this correspondence, the AIU invited the Athlete to provide her explanation with regard to the asserted ADRV.

13. On 19 June 2019, the Athlete submitted a brief to the AIU, denying the allegations and challenging the validity of the Moscow Washout Schedules.
14. On 17 July 2019, the AIU informed the Athlete that it maintained its assertion that she had committed an ADRV and that her case would be submitted to the Court of Arbitration for Sport (“CAS”). In this correspondence, the AIU also granted the Athlete a deadline to choose whether to proceed under Rule 38.19 of the IAAF Competition Rules 2016-2017 (sole instance before a three-member CAS panel) or Rule 38.3 (first instance procedure before a sole arbitrator, with right to appeal before CAS as well).
15. On 29 July 2019, the Athlete informed the AIU that she preferred her case be heard in a sole instance pursuant to Rule 38.19 of the IAAF Competition Rules 2016-2017.
16. On 21 August 2019, pursuant to Rule 38.19 of the IAAF Competition Rules 2016-2017, the Head of the AIU requested WADA’s consent to refer this case to the CAS as sole instance.
17. On 4 December 2019, WADA informed the Head of the AIU that it was unable to agree to the Athlete’s request because it wanted to maintain its right of appeal.
18. On 5 December 2019, the AIU informed the Athlete that due to WADA’s lack of consent, which was needed as per Rule 38.19 of the IAAF Competition Rules 2016-2017, her case would be referred to the CAS pursuant to Rule 38.3 (Sole CAS Arbitrator sitting as a first instance hearing tribunal).

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

19. On 7 February 2020, pursuant to Art. R47 of the Code of Sports-related Arbitration (the “CAS Code”) and Rule 38.3 of the IAAF Competition Rules 2016-2017, the Claimant filed its Request for Arbitration before the CAS against the Respondents. The Claimant requested that its Request for Arbitration be considered as its Statement of Appeal/Appeal Brief. In its Request for Arbitration the Claimant submitted the following request for relief:

*“WA respectfully seeks the CAS Panel to rule as follows:*

- (i) CAS has jurisdiction to decide on the subject matter of this dispute;*
- (ii) The Request for Arbitration of WA is admissible.*
- (iii) The Athlete is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the 2013 Rules.*
- (iv) A period of ineligibility of two to four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date*

*of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*

*(v) All competitive results obtained by the Athlete from 30 June 2013 through to the commencement of any period of provisional suspension or ineligibility 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 the alternative, by the Respondents jointly and severally.*

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

20. On 17 March 2020, the Athlete sent an email to the CAS in which she confirmed she received the CAS correspondence with the Claimant's Request for Arbitration on 13 March 2020 and provided her postal address.
21. On 23 March 2020, RUSAF sent a correspondence to the CAS informing it that, by means of a Decree of the Ministry of Sport of the Russian Federation passed on 31 January 2020, the Ministry "*cancelled the recognition of RusAF as sport organization and transferred this status to the Russian Modern Pentathlon Federation*", and that on 3 February 2020 RUSAF's Executive Committee resigned and "*all rights were transferred to the Task Force of the Russian Olympic Committee*".
22. On 8 April 2020, the CAS Court Office informed the Parties that the Sole Arbitrator appointed to decide the present dispute was the Hon Franco Frattini, Judge and Attorney-at-Law in Rome, Italy, and that Mr Yago Vázquez Moraga, Attorney-at-Law in Barcelona, Spain, had been appointed as *ad-hoc* Clerk in this matter.
23. On 16 April 2020, the CAS Court Office informed the Parties that the deadlines for the First and Second Respondent to file their Answers expired on 22 March and 12 April 2020, respectively, but that the Sole Arbitrator would nevertheless proceed with this arbitration. Furthermore, by means of this correspondence, the CAS Court Office invited the Parties to state whether they considered a hearing necessary.
24. On 19 April 2020, the Athlete submitted an application for legal aid to CAS and noted her preference that a hearing be held in this matter.
25. On 21 April 2020, the Claimant informed the CAS Court Office that it did not consider a hearing necessary.
26. On 22 April 2020, the Athlete reiterated the requests previously filed with her email of 19 April 2020 (i.e. that she considered a hearing necessary).



27. On 5 June 2020, the Athlete's counsel recorded her appearance in the procedure and requested a copy of the CAS file, which the CAS Court Office provided on 8 June 2020.
28. On 11 June 2020, the Athlete's counsel requested an exceptional leave of 30 days as from the receipt of the CAS file to file the Athlete's Answer to the Request for Arbitration.
29. On 23 June 2020, after having invited the Parties to comment on the Athlete's request, the CAS Court Office on behalf of the Sole Arbitrator, granted the Athlete's request to file a late Answer.
30. On 15 July 2020, the Athlete filed her Answer to the Request for Arbitration, in which she requested the Sole Arbitrator issue an award holding that:

*“I. The Request for Arbitration filed by World Athletics is dismissed;*

*II. Ms. Natalya ANTYUKH is found not guilty of any Anti-Doping Rule Violation under rule 32.2 (b) of the 2012-2013 Competition Rules;*

*III. The arbitration costs are borne entirely by World Athletics;*

*IV. World Athletics shall be ordered to contribute to the Ms. Natalya ANTYUKH's legal and other costs up to their entire amount.”*

In her Answer, the Athlete requested to be allowed to file further witness statements at a later stage.

31. On 17 July 2020, the CAS Court Office informed the Parties that the Sole Arbitrator rejected the Athlete's request to file further witness statements.
32. On 10 September 2020, the CAS Court Office issued and sent to the Parties the Order of Procedure for the present case, which the Claimant and the Second Respondent countersigned and returned.
33. On 18 September 2020, a hearing was held with the following persons in attendance:
  - a) For the Claimant:
    - Mr Ross Wenzel, counsel (in-person)
    - Mr Nicolas Zbinden, counsel (by videoconference)
    - Mr Adam Taylor, counsel for the Claimant (in-person)
    - Ms Olympia Karavasili, party representative (by videoconference)
    - Ms Tatiana Hay, Russian interpreter (by videoconference)

b) For the Second Respondent:

- The Athlete (by videoconference)
  - Dr Daria Solenik, counsel (in-person)
  - Mr Gavin Garrat, counsel (in-person)
  - Ms Tatiana Zarubina, Russian interpreter (in-person)
34. Mr Giovanni Maria Fares, CAS counsel (in-person) and Mr Yago Vázquez Moraga (by videoconference), *ad-hoc* Clerk, assisted the Sole Arbitrator at the hearing.
35. At the outset of the hearing, the Parties confirmed that they had no objections as to the appointment of the Sole Arbitrator. Afterwards, the Sole Arbitrator gave the floor to the Parties to present their opening statements. After the opening statements, the Parties had the opportunity to examine the witness, Dr Rodchenkov. Given his status of protected witness, Dr Rodchenkov testified from behind a screen that concealed his upper body. He was accompanied by his legal counsel, Ms Avni Patel, who was allowed to intervene only in case she considered that a question posed by the Parties could jeopardize Dr Rodchenkov's safety. After the examination of the witness, the Parties examined the Athlete.
36. During the hearing, the Parties had the opportunity to present their case, to submit their arguments, examine the witness, answer the questions posed by the Sole Arbitrator and submit their final pleadings. At the end of the hearing, they confirmed that their right to be heard and to equal treatment had been fully respected.

**IV. SUBMISSIONS OF THE PARTIES**

37. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

**A. World Athletics' submissions**

38. In essence, WA submits that:
- The Athlete committed one or more ADRVs in 2013. In this regard, WA considers that the Second McLaren Report identified a significant number of Russian athletes (the Identified Athletes), including the Athlete, that would have been involved or benefited from the Russian doping schemes and practices. WA affirms that this submission relies on the evidence publicly disclosed by Prof McLaren, which supports the findings of his reports, thus proving the involvement of the Identified Athletes. In particular, the forensic IT expert, Mr Andrew Sheldon, confirmed the authenticity of the metadata of all these documents. In addition, WA affirms that

the CAS has confirmed the reliability of this evidence in 13 previous cases, which established that these documents are to be deemed as a reliable evidence for the purposes of establishing an ADRV under the WA Rules.

- With regard to the Athlete's participation in the Moscow Washout Testing, WA holds that four unofficial samples were listed in the Moscow Washout Schedules as belonging to the Athlete, which would date from 30 June 2013, 6 July 2013, 14 July 2013 and 25 July 2013. In the WA's view, this would prove that the Athlete was part of a doping programme. In this regard, in accordance with the information contained in these schedules, in the lead-up to the Moscow World Championships, the Athlete would have been using up to six prohibited substances (Methasterone 25,000, Boldenone 5 ng/mL, Desoxymethyltestosterone 80,000, Oxabolone, DHEA and 1-testosterone).
- WA sustains that it has been established through reliable means that the Athlete used prohibited substances and that she committed a violation of Rule 32.2(b) of the anti-doping regulations that were in force at that time (i.e. the IAAF Competition Rules 2012-2013, the "2013 Rules"), which prohibits the "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*" In this regard, WA holds that the use of a prohibited substance may be established by any reliable means, which would include, but would not be limited to, admissions, evidence of third parties, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport, and other analytical information in the terms of the Rule 33.3 of the 2013 Rules.
- WA affirms that, in the present case, the ADRV/s would be demonstrated by the following facts, documents, and circumstances:
  - The Athletes features on four different versions of the Moscow Washout Schedules, which comprised athletes who were known to be following a doping programme. Furthermore, it indicates that the Athlete was using 6 prohibited substances.
  - The Athlete's name does not appear one - but 4 times - in the Moscow Washout Schedules, and three times with an indication of the presence of prohibited substances.
  - Dr Rodchenkov's statements confirm to having met the Athlete one or two times in the Moscow Laboratory to explain the use of oxandrolone and its detection windows.
- WA notes that pursuant to Rule 40.2 of the 2013 Rules, the period of ineligibility for this ADRV shall be two years, except if certain conditions are met that may

justify an increase or reduction of such period. In particular, the existence of aggravating circumstances would justify increasing the period of ineligibility up to a maximum of 4 years (Rule 40.6 of the 2013 Rules). In the present case, these aggravating circumstances would concur, and consist of the following:

- The Athlete used multiple prohibited substances (up to six) in the lead-up to the 2013 Moscow World Championships.
  - The Athlete was part of a sophisticated doping scheme and, in particular, in the Washout Testing programme for the 2013 Moscow World Championship.
- Therefore, WA maintains that, in accordance with Rules 40.6 (i.e. to be part of a doping plan) and 40.7 (i.e. the occurrence of multiple violations) of the 2013 Rules, an increased sanction up to a maximum of four years of ineligibility should be imposed on the Athlete, starting on the date of the CAS award (Rule 40.10 of 2013 Rules).
- Finally, WA considers that, pursuant to Rule 40.8 of the 2013 Rules, all the results that the Athlete obtained after the first unofficial sample of the Moscow Washout Schedule (i.e. 30 June 2013) and until the commencement of the period of ineligibility should be disqualified. In this regard, WA avers that it is not appropriate to maintain sporting results based on fairness when the ADRV is severe, repeated and sophisticated, just as the present case.

## **B. RUSAF**

39. Despite having been informed of the present procedure and having been invited by the CAS Court Office to file its Answer to the Request for Arbitration, RUSAF did not file any Answer.

## **C. The Athlete**

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

- The Athlete denies having committed any ADRV. She affirms that she never used any prohibited substance and did not provide any unofficial testing sample. During her career, she would have undergone numerous doping controls and she never tested positive.
- WA bears the burden to establish that an ADRV occurred, which shall be established by any "reliable means". However, the Claimant intends to sustain it solely on the basis of the "Moscow Washout Schedules" and has not submitted any other additional evidence to corroborate it. This sole direct evidence is unreliable and, in any case, insufficient to ascertain the alleged ADRV to the comfortable

satisfaction of the Sole Arbitrator. Furthermore, the Athlete denies being the individual listed in the Moscow Washout Schedules.

- Despite the fact that the CAS has considered in previous cases that the Moscow Washout Schedules have a “general reliability”, such finding does not allow a presumption that the document is reliable in any and all specific cases, and less so in the case at stake. The Athlete distinguishes between the general “reliability” of a piece of evidence and its capacity to ascertain an alleged fact. In other words: even if such document is considered in abstract as reliable according to Rule 33.3 of the 2013 Rules, it still needs to be capable of demonstrating the facts that are subject to proof in the present case (i.e. the use or attempted use of a prohibited substance or a prohibited method) to the comfortable satisfaction of the Sole Arbitrator, which is the applicable standard of proof.
- In particular, in the Second Respondent’s view, the Claimant would have to prove:
  - i. the use or attempted use of a prohibited substance or a prohibited method;
  - ii. that the Athlete engaged in the use or attempted use or that it could be attributable to her;
  - iii. that the substance was prohibited at the moment the facts occurred.
- The Athlete considers that in the present case, none of these facts can be established to the required degree of certainty solely on the basis of the Moscow Washout Schedules. In particular:
  - i. *The Athlete is not personally identified*

The Athlete affirms that all the accusations against her depart from the false assumption that she is featured four times in the Moscow Washout Schedules, which is not true. The relevant file of the Moscow Washout Schedules only mentions the Athlete’s last name “Antyukh” and does not provide any other information to identify the relevant athlete, such as the gender or the date of birth. In her view, this lack of information increases the possibility of an error in the identity of the athlete, as it can be another athlete or a family member with the same last name. For example, the Athlete’s brother Mr. Kiril Antyukh is a top-level bobsledder and member of the Russian national team. Consequently, the information appearing on the Moscow Washout Schedules is not sufficient to identify the Athlete as the perpetrator of an ADRV.

In this regard, the Athlete sustains that, even assuming that the last version of the Moscow Washout Schedules only contains information about light athletics or track-and-field athletes, this should not be taken into account as other earlier

versions of the schedule mentioned athletes names like “Selikhov” which is a top-level bobsleigh rider, a member of the Russian national team and teammate of Mr Kiril Antyukh, who shares the same coach, Mr O.G. Sokolov. Therefore, the presence of a teammate on the schedule allows to infer that the Claimant’s doping allegation could have been equally directed against Mr Kiril Antyukh, and one may not reasonable exclude the fact that Ms Natalya Antyukh was charged by error. This situation reveals the limit of the Moscow Washout Schedules’ evidentiary power and, namely, their capacity to identify the athlete to the comfortable satisfaction of the Sole Arbitrator.

Regarding Dr. Rodchenkov witness statement, the Athlete considers that it does not add any credit to WA’s thesis, as he only attests to an alleged personal contact with Mr. Ter-Avanesov and Mrs. Kulikova, and not to have met the Athlete in person or to see her using the prohibited substances. In this regard, the Athlete notes that she does not appear in any of the large number of emails included in the Evidence Disclosure Package (“EDP”).

In other cases, athletes who have been found to have committed an ADRV for their involvement in the alleged doping program were not sanctioned based solely on the fact that their names were in the lists (the Moscow Washout Schedules, the London Washout Schedule or the Duchess List), as the Claimant intends to do in the present case. Therefore, the evidence produced to assert the alleged ADRV (i.e. an Excel spreadsheet mentioning a last name similar to the Athlete’s) is not only insignificant but is also utterly insufficient to sustain an ADRV allegation.

*ii. The use or attempted use is not established*

According to the WA Antidoping Rules, the term “use” means the “*utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method*”. The EDP0032 table only lists substances and dates, which do not by themselves validate the presumption of any “*utilisation, application, ingestion, injection or consumption*” by the Athlete and does not specify the exact event recorded. Moreover, there is no tangible evidence that could prove that the unofficial samples ever existed and even if they did, there is no record of the circumstances in which the samples were collected or if they belong to the Athlete. In addition, neither Dr. Rodchenkov nor the EDP e-mails provide direct statements or clear information about the Athlete having followed the doping program at any time. Furthermore, there is no evidence from any witness who claims to have observed the Athlete using a prohibited substance or attempting to do so. In sum, even if the evidence submitted by WA is taken together, it is insufficient to establish that the Athlete committed any ADRV.

- With regard to the McLaren Reports, the Athlete acknowledges that in previous cases other CAS Panels have ruled that the McLaren Reports and the EDP documents must be considered as “reliable evidence” under Rule 33.3 of the 2013 Rules. However, if these reports were to be considered as expert evidence adduced against the Athlete, she would not be in the position to avail herself of counterevidence to try to challenge or reverse the reports’ findings, which would contravene the principle of party equality. For this reason, the Athlete requests that the Sole Arbitrator rule on each of the following arguments *in specie*:
  - Prof Richard H. McLaren had previously been tied to WADA. Therefore, his investigations were not conducted fairly, objectively and impartially and they do not comply with the Standard for Testing and Investigation foreseen in Rule 12.3.3 of the 2013 Rules.
  - WADA gave Prof. Richard H. McLaren a one-sided mandate and not enough time to perform a complete investigation. Specifically, he was instructed to review certain evidence to support the allegations of sample manipulation but he did not make full use of his resources to interview potential witnesses or any of the athletes mentioned in the EDP files. He also never visited the Moscow Laboratory.
  - All the documentary evidence upon which it relies comes from the same source, which is Dr. Rodchenkov’s hard drives. The reports also rely on unnamed witnesses whose exact testimony cannot be assessed and on Dr. Rodchenkov’s allegations, which were made under the threat of deportation from the US. Consequently, the use of this illegal evidence against the Athlete violates Art. 6 of the European Court of Human Rights.
  - In addition, according to certain CAS Jurisprudence, the McLaren Reports are not enough to support an anti-doping rule violation.
- Regarding Dr Rodchenkov’s witness statement, the Athlete considers it unreliable. The Athlete denies having met Dr. Rodchenkov, as the latter affirms. Indeed, she affirms that she never was in the Moscow Laboratory. Dr Rodchenkov’s statements contains certain errors that would prove his unreliability. For example, Dr Rodchenkov affirms that the Athlete changed events in 2010, when the truth is that it occurred in 2012, when she focused only on the 400-metre hurdles. In this regard, the Athlete notes that the few correct facts contained in Dr Rodchenkov’s statement are notorious facts about the Athlete, which can be found easily through publicly available resources. From her point of view, the rest of his statement looks as a template designed to be applied in several CAS procedures with the aim of inducing similar awards. In this regard, the Athlete highlights that some parts of Dr. Rodchenkov’s narrative were found to be mere hearsay by two independent CAS Panels.

- Regarding the period of ineligibility requested, the Athlete finds it grossly disproportionate. In addition, the Athlete considers that the aggravating circumstances alleged to justify the maximum period of ineligibility (4 years) were not established by the Claimant. In this regard, the Athlete considers that a four-year period of ineligibility would be unreasonable and grossly disproportionate taking into account the circumstances at stake and, in particular, that the athlete has a clean doping record, not having committed any previous ADRV, and that she retired from competition on 5 February 2017.
- On the other hand, if the Sole Arbitrator decides to proceed with the disqualification of the Athlete's results, the fairness exception shall be applied. CAS jurisprudence has frequently applied the fairness exception and let results remain partly in force when the potential disqualification period extends over many years and there is no evidence that the athlete has committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period. In this regard, the Athlete states that there is no evidence that she committed other ADRVs from the time of the alleged violation (i.e. 30 June 2013) to the date of her retirement (i.e. 5 February 2017). Likewise, concerning the purported goal of the alleged doping (winning the Moscow IAAF World Championships), the Athlete highlights that her mediocre performance in this event and in the following ones must be considered.

## V. JURISDICTION

41. In accordance with Rule 38.1 of the 2016-2017 IAAF Competition Rules (the "2016 Rules"), *"Every Athlete shall have the right to request a hearing before the relevant tribunal of his National Federation before any sanction is determined in accordance with these Anti-Doping Rules"*. At the same time, Rule 38.3 of the 2016 Rules provides:

*"3. 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 by 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.”*

42. The Sole Arbitrator notes that in the case at hand, the Athlete was an international-level athlete and the RUSAF was the National Federation that should have had to entertain this case in first instance, even though its membership from the IAAF has been suspended since 26 November 2015. Therefore, due to such suspension from membership, it was not possible for the First Respondent to hold a hearing “within two months”, as set out by Rule 38.3 of the 2016 Rules. In these circumstances, WA was entitled to submit the matter to the CAS for its decision in first instance by a Sole Arbitrator.
43. Furthermore, the Sole Arbitrator observes that the Parties have not disputed the jurisdiction of the CAS and confirmed such jurisdiction when signing the order of procedure. It follows that CAS has jurisdiction to entertain the present case, in accordance with Rule 38.3 of the 2016 Rules, acting as first-instance deciding tribunal in the present matter.

## **VI. ADMISSIBILITY**

44. Rule 38.3 of the 2016 Rules provides that the proceedings shall be governed by the CAS Code and must be handled in accordance with the rules of the appeal arbitration procedures. However, this provision expressly establishes that the time limit for appeal envisaged in the CAS Code does not apply to the proceedings. Therefore, the Sole Arbitrator considers the Request for Arbitration was made in a timely manner.
45. Moreover, the Sole Arbitrator considers that the Request for Arbitration, to be considered as Statement of Appeal/ Appeal Brief, complies with any further procedural requirements that are set out in the CAS Code. It then follows that the claim is admissible.

## **VII. APPLICABLE LAW**

46. Art. R58 of the CAS Code reads 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. As an affiliated member of the RUSAF who participated in the official competitions that were organized by it and by WA during her career, the Athlete is subject to the WA Anti-Doping Rules (the “WA ADR”) in accordance with its Rule 1.6. With respect to the applicable law, Rule 13.9.4 of the WA ADR, which came into force on 1 November 2019, provides:

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

48. Likewise, Rule 13.9.5 of the WA ADR establishes:

*“In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise.”*

49. On the other hand, with regard to the version of the regulations that shall be considered, the Sole Arbitrator notes that Rule 21.3 of WA ADR rules:

*“Any case pending prior to the Effective Date, or brought after the Effective Date but based on an Anti-Doping Rule Violation that occurred before the Effective Date, shall be governed, with respect to substantive matters, by the predecessor version of the anti-doping rules in force at the time the Anti-Doping Rule Violation occurred and, with respect to procedural matters by (i) for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules and (ii) for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 Competition Rules. Notwithstanding the foregoing, (i) Rule 10.7.5 of these Rules shall apply retroactively, (ii) Rule 18 of these Rules shall also apply retroactively, unless the statute of limitations applicable under the predecessor version of the Rules had already expired by the Effective Date; and (iii) the relevant tribunal may decide it appropriate to apply the principle of lex mitior in the circumstances of the case.”*

50. The alleged ADRVs occurred in 2013, when the 2013 Rules were still in force. Therefore, taking into account the above-mentioned regulatory framework and considering the time at which the alleged ADRV occurred, the Sole Arbitrator concludes that the applicable regulations in the sense of Art. R58 of the CAS Code are the 2013 Rules for substantive matters and, with regard to any procedural issues, the 2016 Rules. In addition, in case these regulations do not rule a specific aspect of the dispute, Monegasque law shall subsidiarily apply.

## VIII. MERITS

### A. The ADRV asserted by WA

51. WA charges the Athlete with an alleged violation of Rule 32.2(b) of the 2013 Rules, which prohibits the use of Prohibited Substances or Methods in the following terms:

*“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*

- (i) it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
- (ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti- doping rule violation to be committed.”*

52. In this respect, the 2013 Rules defines Use as *“The utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance of Method”*. The 2013 Rules identify the Prohibited Substances as those included in the Prohibited List published by WADA identifying the Prohibited Substances and Methods (the “WADA Prohibited List”). In this regard, the Sole Arbitrator observes that in accordance with the WADA Prohibited List that was in force at the time of the alleged incidents (i.e. 2013 Edition), Methasterone, Boldenone, Desoxymethyltestosterone, Oxabolone, DHEA (i.e. dehydroepiandrosterone) and 1-T (i.e. 1-testosterone) were Prohibited Substances.

53. In addition, to establish an ADRV, Rule 33.3 of the 2013 Rules 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, experts reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information.”*

54. On the other hand, pursuant to the 2013 Rules, the burden of proving the commission of an ADRV lies on the Claimant, who shall discharge it to the comfortable satisfaction of the Sole Arbitrator. In particular, Rule 33 para. 1 and 2 of the 2013 Rules establish:

*“1. The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard*

*of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*

2. *Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof.”*

55. The CAS jurisprudence has clearly shaped the comfortable satisfaction standard as being lower than the criminal standard of beyond reasonable doubt but higher than other civil standards such as the balance of probabilities. Indeed, *“the “comfortable satisfaction” standard of proof has been developed by the CAS jurisprudence (i.e. CAS 2009/A/1920, CAS 2013/A/3258, CAS 2010/A/2267, CAS 2010/A/2172) which has defined it by comparison, declaring that it is greater than a mere balance of probability but less than proof beyond a reasonable doubt. In particular, the CAS jurisprudence has clearly established that to reach this comfortable satisfaction, the Panel should have in mind “the seriousness of allegation which is made” (i.e. CAS 2005/A/908, CAS 2009/1920). It follows from the above that this standard of proof is then a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be “comfortable satisfied”(CAS 2014/A/3625, para. 132).*

56. Notwithstanding the foregoing, it shall be noted that this standard of proof *“does not itself change depending on the seriousness of the (purely disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support” (CAS 2014/A/3630, para. 115).* Therefore, when assessing the evidence produced in the present case, the Sole Arbitrator shall apply this substantive and procedural framework.

## **B. Assessment of the evidence**

### *i. Preliminary remarks*

57. To establish the Athlete’s commission of the alleged ADRV, the Claimant relies on several facts and pieces of evidence from which it considers that the use or attempted use by the Athlete of six prohibited substances can be inferred. First, the Claimant avers that the fact that the Athlete features on the Moscow Washout Schedules is clear evidence that she was following a doping programme and that she used Prohibited Substances. In this regard, the Claimant submits that the CAS has already examined the

reliability of the EDP documents, including the Moscow Washout Schedules, and has considered them to be reliable evidence for the purposes of establishing an ADRV. Furthermore, the Claimant considers that Dr Rodchenkov's testimony corroborates that the Athlete was engaged in an ADRV.

58. In contrast, the Athlete, besides denying the charges and the facts asserted, sustains that the Claimant has not proved that she committed an ADRV. To this purpose, the Athlete holds that the Moscow Washout Schedules as well as the McLaren Reports are unreliable evidence and that, in any case, they do not have sufficient probative value to establish the commission of the alleged ADRV. In this regard, the Athlete affirms that the Moscow Washout Schedules are the sole evidence upon which the ADRV assertion is based. Regarding Dr Rodchenkov's testimony, the Athlete contends that it is not credible.
59. Before entering into the merits of this case, the Sole Arbitrator deems it convenient to remark that, despite the fact that the McLaren Reports' findings would prove that a general doping scheme in Russia existed, and that this would have somehow been confirmed by the Russian Ministry of Sport on 13 September 2018, the mere reference of an athlete's name in the McLaren Reports or his/her inclusion in the different Washout Schedules is in principle not sufficient to establish an ADRV. The existence of systemic doping practices in Russian sport is a relevant fact to be considered when assessing the potential commission by an athlete of an ADRV in that context. However, to impose a sanction on an athlete for an ADRV, it is necessary that the prosecuting body produces the necessary evidence to establish the commission of that ADRV in that specific case.
60. In this regard, the Sole Arbitrator considers that the McLaren Reports and the EDP shall not be considered in isolation, as a kind of evidentiary presumption that an ADRV has been committed by a certain athlete, and should be considered together with the rest of the evidence and circumstances of the specific case. In fact, this was expressly remarked in the Second McLaren Report as follows (emphasis added):

*“The IP is not a Results Management Authority under the World Anti-Doping Code (WADC 2015 version). The mandate of the IP did not involve any authority to bring Anti-Doping Rule Violation (“ADRV”) cases against individual athletes. What was required is that the IP identify athletes who might have benefited from manipulations of the doping control process to conceal positive doping tests. Accordingly the IP has not assessed the sufficiency of the evidence to prove an ADRV by any individual athlete. Rather, for each individual Russian athlete, where relevant evidence has been uncovered in the investigation, the IP has identified that evidence and is providing it to WADA in accordance with the mandate. It fully expects that the information will then be forwarded to the*

*appropriate International Federation (“IF”) for their action.” (Section 1.8 of the Second McLaren Report).*

61. The Sole Arbitrator agrees with the Panel in CAS 2017/A/5379 who considered that it was not *“possible to conclude that the existence of a general doping and cover-up scheme automatically and inexorably leads to a conclusion that the Athlete committed the ADRVs alleged by the IOC. Instead, the Panel must carefully consider the ingredients of liability under each of the relevant provisions of the WADC that the Athlete is alleged to have contravened. It must then consider whether the totality of the evidence presented before the Panel enables it to conclude, to the requisite standard of comfortable satisfaction, that the Athlete personally committed the specific acts or omissions necessary to constitute an ADRV under each of those separate provisions of the WADC.”*
62. Therefore, all the potential ADRVs that the different sporting prosecuting authorities may investigate as a result of the information contained in the McLaren Reports and the evidence included in the EDP that accompanied the Second McLaren Report must be evaluated on a case-by-case basis. Furthermore, it necessary for the prosecuting authority to produce sufficient evidence in order to persuade the adjudicating authority or the hearing Panel at stake to its comfortable satisfaction that a specific athlete has committed a particular ADRV. Therefore, this necessarily implies that the prosecution body must sufficiently discharge its burden of proof in each particular case.
63. In this regard, the Sole Arbitrator remarks that the necessity of a case-by-case approach is clearly evidenced by the CAS jurisprudence in cases related to potential ADRVs that might have been committed in the context of the Russian doping scheme. In particular, this can be perfectly observed if one compares the findings of the cases CAS 2017/A/5422 and CAS 2017/A/5379, where the same Panel reached different conclusions with regard to the ADRV asserted against two different Russian athletes in the context of the 2014 Olympic Winter Games in Sochi, which were primarily based on the same kind of evidence (i.e. the McLaren Reports, the Duchess List, Dr Rodchenkov’s testimony). While the Panel in CAS 2017/A/5422 found that the prosecuting authority had discharged its burden of establishing to its comfortable satisfaction that the Athlete had used a prohibited substance, the Panel in CAS 2017/A/5379 did not.
64. Therefore, the Sole Arbitrator is of the opinion that the mere presence of the Athlete’s name on the Moscow Washout Schedules is not sufficient to establish to his comfortable satisfaction that the Athlete used Prohibited Substance. Notwithstanding the above, and contrary to what the Athlete submits, the Sole Arbitrator finds that in the present case, the Moscow Washout Schedules are not the sole direct evidence upon which the ADRV assertion is based. Instead, and for the reasons explained below, the Sole Arbitrator

believes that the Claimant has produced a sufficient body of evidence from which it can be inferred that the Athlete committed an ADRV.

65. In this respect, to evaluate the evidence that the Parties have made available, the Sole Arbitrator must bear in mind that *“corruption is, by nature, concealed as the parties involved will seek to use evasive means to ensure that they leave no trail of their wrongdoing”* (CAS 2010/A/2172). Therefore, in assessing the evidence, the Sole Arbitrator must take into account *“the nature of the conduct in question and the paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities”* (CAS 2009/A/1920).
66. For this reason, in these types of cases, where the individuals involved follow a deliberate preestablished plan to conceal their actions, it is very difficult to obtain direct and conclusive evidence of the infringing conduct. Therefore, in cases of this kind, it is necessary to adopt a holistic approach in the fact-finding process and to refrain from assessing the evidence atomistically. In the Sole Arbitrator’s view, instead of assessing each piece of evidence individually or in isolation, it is necessary to evaluate the evidence in conjunction with the rest of items of evidence available and consider it altogether. This is because, as it occurs with complex criminal cases, the weight of a piece of evidence isolated from the rest of the evidentiary context may seem insufficient to establish a given fact, while the consideration of all the items of evidence in totality can be revealing.

ii. *The evidence available*

67. In the Moscow Washout Schedules the following four entries appear under the name “АНТЮХ”:

Антюх 30/06		метастерон (25000), болденон (5 нг/мл), дезоксиметилтестостерон (80000), оксаболон
Антюх 06/07	перегруз прогормонов	Очень много DHEA и 1-T, остальное плохо видно
Антюх 14/07		T/E 2.5 (прогормоны), дезоксиметилтестостерон следы
Антюх 25/07	параллельный зачет	T/E 0.6 чисто

Its non-contested translation into English reads as follows:

Antukh 30/06		methasterone (25000), boldenone (5 ng/ml), desoxymethyltestosterone (80000), oxabolone
Antukh 06/07	prohormones' overload	Too much of DHEA и 1-T, the rest is not clearly visible
Antukh 14/07		T/E 2.5 (prohormones), desoxymethyltestosterone traces
Antukh 25/07	parallel representation	T/E 0.6 clear

68. The Athlete challenges the reliability of the Moscow Washout Schedules. However, the Sole Arbitrator has been provided with the native files of the Moscow Washout Schedules as well as with the expert report of the IT expert Mr Andrew Sheldon and confirms that this evidence is reliable. In this regard, when reviewing these original

files, the Sole Arbitrator has observed that the Athlete's name indeed appears in ten different versions/files of the Moscow Washout Schedules that were created or saved on different dates. In particular, these versions correspond to the following Excel files:

- EDP0028 – Tim\_Nag\_01Aug2013
- EDP0029 – Tim\_Nag\_01Aug2013
- EDP0030 – Tim\_Nag\_04July2013
- EDP0031 – Tim\_Nag\_19July2013
- EDP0032 – Tim\_Nag\_21Aug2013
- EDP0033 – Tim\_Nag\_26July2013
- EDP0034 – Tim\_Nag\_30July2013
- EDP0035 – Tim\_Nag\_04July2013
- EDP0036 – Tim\_Nag\_19July2013
- EDP0037 – Tim\_Nag\_26July2013
- EDP0038 – Tim\_Nag\_30July2013

69. The Sole Arbitrator has taken the necessary time to examine the internal metadata of each native file (the file Properties) and has observed that the person referred to as the author of these documents is “Tim Sobolevsky”, i.e. the former Deputy Director of the Moscow Laboratory. In addition, the properties of the file referred to the “Moscow Antidoping Lab”. On the other hand, the dates of creation and modification of the document correspond to the time of the facts at stake.
70. It must be also noted that the IT expert, Mr Andrew Sheldon, analyzed each of these files and in pages 47-59 of his forensic expert report, which examined the contents of each file, the raw file system and the internal metadata associated with each file, Mr Sheldon concluded that they were authentic. In line with this, the Sole Arbitrator has also noticed that in previous cases, other CAS Panels have reached the conclusion that the McLaren Reports and the Moscow Washout Schedules are reliable evidence. *Inter alia*, in case CAS 2018/O/5667, after a thorough analysis of the EDP documents, the Sole Arbitrator reached the conclusion that they are reliable. In particular, with regard to the Moscow Washout Schedules, the Sole Arbitrator of that case found “*that the contents of the Moscow Washout Schedules support the finding that they are reliable in general*”. Therefore, in the present case the Sole Arbitrator deems the Moscow Washout Schedules as a reliable evidence in the sense of Rule 33.3 of the 2013 Rules.
71. In addition, the Athlete also challenges the reliability of the McLaren Reports in general. To this end, the Athlete puts forward several arguments that are indeed a mere replication of those submitted by another athlete in the case CAS 2018/O/5668 to contest the reliability of this piece of evidence (i.e. McLaren's lack of independence and impartiality, insufficient time to conduct a thorough investigation, not having visited the Moscow Laboratory, lack of independence of the members of the “McLaren team”, all the evidence relied upon in the reports being originated from a single source, Dr Rodchenkov's hard drives, etc.). The Sole Arbitrator considers these submissions to be vague and general and not linked with the facts of the present case. In the Sole



Arbitrator's view, these arguments ultimately refer to the objectiveness and validity of the McLaren investigation itself, which is not the object of these proceedings. Therefore, for the sake of procedural economy, the Sole Arbitrator embraces and refers to the considerations made in the award CAS 2018/O/5668 in this regard, thus making it unnecessary to address each of these contentions in the present case. In this respect, the Sole Arbitrator highlights that, while precedents at CAS are not binding, in certain circumstances the Panels and Arbitrators can perfectly consider or refer to what was decided in previous CAS awards to address certain issues or matters that are substantially identical or that deal with the same evidence that was assessed in these previous cases, provided that they share the considerations made in the previous cases.

72. On the other hand, the Athlete contends that it cannot be established that she is personally identified in the Moscow Washout Schedules because these entries only mention the Athlete's last name, and not her given name. In this regard, the Athlete sustains that the individual referred to in these entries may be her brother, Mr Kiril Antyukh, a professional bobsledder. Therefore, the Athlete considers that it is not possible to be sure that these entries refer to her, as it could be possible that they refer to her brother.
73. The Sole Arbitrator cannot endorse this argument as he deems it is not credible. First, because these files mostly refer to athletics athletes that were following a Washout Testing programme for the 2013 Moscow World Cup. As the Athlete herself observes, there is only one bobsledder listed in one of the versions of the Moscow Washout Schedules, whose name is indeed marked in red and the second column expressly noted "bobsleigh". On the contrary, in the Sole Arbitrator's view, the Athlete's hypothesis is easily dispelled if one considers that the same files also include the hurdle race athlete Ekaterina Galitskaia, who was also coached by the Athlete's coach, Ms Kulikova Yekaterina, as the Athlete recognized during her examination. In particular, the Sole Arbitrator finds it very telling that in the Moscow Washout Schedules Ms Galitskaia appears to have taken the same Prohibited Substances (methasterone, boldenone, oxabolone and testosterone) and to have provided unofficial samples in the same dates (6 July and 14 July), especially bearing in mind that Ms Galitskaia was found guilty of an ADRV in CAS 2018/O/5712 and was sanctioned with a period of ineligibility of four years, *inter alia*.
74. *A fortiori*, the Sole Arbitrator further notes that Dr Rodchenkov has identified the Athlete as the person appearing in the Moscow Washout Schedules. In addition, in the Sole Arbitrator's view, the fact that the Athlete's name is listed in the document four times, and that she appears in ten different versions of this document, makes the possibility that her name was mistakenly included in the Moscow Washout Schedules extremely unlikely. As a result, the Sole Arbitrator considers that the Athlete is sufficiently identified in the Moscow Washout Schedules.

75. Regarding Dr Rodchenkov's testimony, the Athlete submits that it is not sufficient to corroborate the veracity of the Moscow Washout Schedules, as he did not see the Athlete using the prohibited substance. In addition, the Athlete holds that Dr Rodchenkov is not credible, which would be proven by the fact that he has incurred in certain errors with regard to the Athlete's change of events, which did not occur in 2010 but in 2012. In addition, the Athlete affirms that Dr Rodchenkov is not independent, because by giving his testimony, he benefits from the protection of the United States.
76. Before evaluating the witness' credibility or lack thereof in the present case, the Sole Arbitrator deems it necessary to stress that it is not admissible to question Dr Rodchenkov's independence due to his condition as a protected witness. In the Sole Arbitrator's opinion, if Dr Rodchenkov has been included in the witness protection programme of the United States, it is precisely because the competent authorities consider that his life or personal safety is at serious risk. Preventing witness and whistleblower intimidation and harm of any kind and, in general, protecting witnesses whose testimony may be crucial to uncover systematic corruption cases like the Russian doping scheme, is essential to secure their cooperation to this end. Their help is essential to combat and uncover systemic corruption. For obvious reasons, the protection provided cannot be described as a benefit to the witness. To the contrary, by giving his testimony the witness is not taking any advantage of the situation; rather, he is facing an extremely difficult situation. Being a protected witness is not a privilege but a hard burden. Therefore, the Athlete's claims in this regard are flatly rejected.
77. Aside from the foregoing, and after having examined Dr Rodchenkov's testimony, the Sole Arbitrator deems it credible and does not find any reason why his testimony should be biased. Dr Rodchekov explained that he met the Athlete and her coach, Ms Kulikova, in 2010 and discussed steroid use and steroid programs for the Athlete and how to avoid positive findings. He also pointed out that during this meeting, the Athlete remained in silence. He also recalled that after this first meeting, he also met the Athlete and the coach "one or two times" in the Moscow Laboratory to explain the use of oxandrolone and its detection windows. Furthermore, he remembered having informed Mrs Irina Rodinova, who was allegedly in charge of the Athlete's doping program, about the result of the analysis of her second sample suggesting prohormones abuse, indicating to Mrs Rodinova to tell the Athlete to stop taking them.
78. At the same time, the Sole Arbitrator considers that Dr Rodchenkov gave a comprehensive and detailed answer to all the questions posed by the Athlete's counsel. He detailed that the meeting that he held with the Athlete in 2010 lasted 45 minutes. He also clarified that he was not the original author of the Moscow Washout Schedules despite having updated them, but that were created by Mr Sobolevsky. He also explained that he did not help collect any sample and that he did not take care of the testing of the samples; that was done by Mr Sobolevsky and his team. However, the

witness confirmed that he saw the test results. Furthermore, Dr Rodchenkov recognized not having seen any specific bottle or sample with the Athlete's name.

79. At the hearing, the Sole Arbitrator had the opportunity to examine Dr Rodchenkov and his credibility as a witness and found his testimony credible and convincing. In this regard, the fact that he recognized not having tested or collected the Athlete's samples is coherent with the fact that Dr Rodchenkov was the Director of the Moscow Laboratory, and hence it makes sense that he was not in charge of this activity. In addition, given his position as Director, it is logical that he was aware of all the washout process. In his view, the witness' answers to the Athlete's counsel were truthful. In addition, all the answers and statements were consistent with the rest of the evidence, particularly the Moscow Washout Schedules. Furthermore, the Sole Arbitrator does not find any reason why Dr Rodchenkov would give false testimony against the Athlete. Specifically, the reasons suggested by the Athlete (i.e. to be in the witness protection programme) do not make any sense, as he is already in this programme. Moreover, for the sake of completeness, the fact that Dr Rodchenkov did not see the Athlete using the prohibited substance is irrelevant, as the ADRV can be established on the basis of other reliable indirect evidence and can be inferred from the circumstances at stake.
80. By contrast, the Sole Arbitrator finds the Athlete's attitude very telling. She simply denies the fact but does not offer any reasonable or plausible explanation to the facts in dispute. Indeed, the Sole Arbitrator deems it not credible that, after knowing that she had been included in the Moscow Washout Schedules, she did not even comment this situation with her team members, as she stated during her examination. In this regard, the fact that other athletes coached by Ms Kulikova had been found to have committed ADRVs, is another circumstantial element supporting the idea that the Athlete was engaged in a doping programme. Furthermore, the fact that the Athlete tried to raise doubts about the potential inclusion of her brother in the Moscow Washout Schedules without any objective grounds seems quite opportunistic. For this reason, the Sole Arbitrator deems the Athlete's submissions not credible and indeed unfounded. In his view, there is no credible explanation for the undisputed fact that the Athlete featured in the Moscow Washout Schedule, other than the fact that she was indeed engaged in a doping programme.
81. Therefore, taking into account all the foregoing and undertaking a holistic evaluation of the case and assessing all the pieces of evidence in conjunction, the Sole Arbitrator is comfortably satisfied that the Moscow Washout Schedules are reliable with respect to the Athlete's entries, from which it can be inferred that in summer 2013, the Athlete used the following Prohibited Substances:
- Methasterone, which is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List.

- Boldenone, which is an exogenous anabolic steroid prohibited under S.1.1.a of the 2013 WADA Prohibited List.
- Desoxymethyltestosterone, which is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List
- Oxabolone, which is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List.
- DHEA (i.e. dehydroepiandrosterone), which is an endogenous anabolic steroid prohibited under S1.1.b of the 2013 WADA Prohibited List.
- 1-T (an abbreviation of 1-testosterone), which is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List.

82. As a result, the Sole Arbitrator is comfortably satisfied that the Athlete used six different Prohibited Substances between 30 June 2013 and 25 July 2013, and thus that she infringed Rule 32.2(b) of the 2013 Rules.

### **C. The sanction**

83. Rule 40.2 of the 2013 Rules provides:

*“The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:*

*First Violation: Two (2) years’ Ineligibility.”*

84. Furthermore, Rule 40.6 of the 2013 Rules establishes the following aggravating circumstances which may increase the period of ineligibility:

*“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 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 or used or possessed a Prohibited Substance or Prohibited Method 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 the 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.*”

85. In addition, Rule 40.7(d)(i) of the 2013 Rules provides that “*the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)*”.
86. Taking into account the circumstances of the present case, where it has been established (i) that the Athlete was engaged in the Washout Testing programme, hence forming “*part of a doping plan or scheme*” in the sense of Rule 40.6 of the 2013 Rules, and (ii) that the Athlete used six different Prohibited Substances within a period of one month to enhance her performance for the 2013 Moscow World Championship, the Sole Arbitrator considers that in the case at hand several aggravating circumstances concur to justify the imposition of the maximum sanction allowed: a period of ineligibility of four years that shall start on the date of this award.
87. Contrary to what the Athlete submits, and bearing in mind that the Athlete used multiple Prohibited Substances on multiple occasions and the context in which this took place (i.e. as part of a systematic doping scheme), the Sole Arbitrator finds this sanction is appropriate and proportionate to the seriousness of the infringement. In addition, in the Sole Arbitrator’s view, the Athlete has not given any specific reason that could justify that a 4-year sanction could be considered disproportionate. In particular, the Sole Arbitrator considers that the fact that the Athlete had a clean doping record until 2013 is not relevant in the present case, given the systemic and centralised cover-up and manipulation of the doping control process that existed in Russia at that time, which makes her previous records of no avail. In these circumstances, the inexistence of previous doping records does not justify *per se* that the Athlete did not previously commit an ADRV. In line with this, the fact that the Athlete retired from competition on 5 February 2017 is not relevant in the present case, given the time and resources that had to be spent to undercover the Russian doping scheme.

88. On the other hand, in accordance with Rule 40.8 of the 2013 Rules, the ADRV also entails the disqualification of the Athlete's results in competitions after the commission of the ADRV in the following terms:

*"In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 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."*

89. Therefore, the general rule is that, in addition to the automatic disqualification of the results in the competition where the Adverse Analytical Finding has been produced, all the Athlete's competitive results obtained from the date of the commission of the ADRV through the start of any provisional suspension or ineligibility period shall be disqualified. In this regard, the Sole Arbitrator notes that the retroactive disqualification of the competitive results of an athlete that has committed an ADRV is fair and necessary to restore the integrity of all the sporting competitions in which he or she competed, rectifying the record books in the interest of sport. Deciding otherwise would be tantamount to reward the deceiver and would not be fair at all vis-à-vis the rest of the athletes that did not use Prohibited Substances.
90. Notwithstanding this, it is also important not to forget that the primary reason behind this measure (i.e. the disqualification of the sporting results of an athlete that cheated) is not to sanction him or her, but to ensure fair play and equal opportunities for all athletes, annulling those results achieved by those who acted or is reasonable to believe that have acted dishonestly vis-à-vis their competitors, being involved in any kind of ADRV, which is one of the most despicable breaches of the fundamental principles of sport. But, at the same time, it should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time.
91. The Sole Arbitrator notes that this exception based on fairness has been acknowledged by the CAS jurisprudence and applied in order to adjust to the specific circumstances of the case the period of time in which the sporting results are to be disqualified. In this

regard, *“the CAS panels have frequently applied the fairness exception and let results remain partly in force when the potential disqualification period extends over many years and there is no evidence that the athlete has committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period (see e.g. CAS 2016/O/4481, CAS 2017/O/4980, CAS 2017/O/5039 and CAS 2017/A5045). The CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case”*.

92. In circumstances of this kind, for fairness reasons it may be necessary to adjust the period of disqualification, accommodating it to the particularities of the case in pursuit of a fair and reasonable result. However, after having assessed and weighted all the circumstances and factors of the present case, the Sole Arbitrator finds no reason to reduce on the grounds of fairness the ordinary disqualification period that would correspond in application of Rule 40.8 of the 2013 Rules. On the contrary, bearing in mind the seriousness of the ADRV, in particular considering that the Athlete used six different Prohibited Substances and that was part of a sophisticated doping scheme, the Sole Arbitrator considers that in the case at hand the retroactive disqualification of the Athlete's competitive results is indeed fair and necessary.
93. In this respect, in the Sole Arbitrator's view, even considering the delay of the Claimant in establishing or at least asserting the Athlete's ADRV (that was committed on 30 June 2013), the fairness exception would not apply. In particular, as regards of the period elapsed since the participation of the Athlete in the Washout Testing scheme and the notification of the ADRV assertion by the AIU, the Sole Arbitrator is of the opinion that this delay is not attributable to the prosecuting body. To the contrary, as explained before, given the complexity of the Russian doping programme, in his view it was materially impossible for the Claimant to do it before, given the number of athletes and individuals that were involved in this doping scheme and that were being investigated after the Russian doping scheme had been exposed.
94. In this regard the Sole Arbitrator also observes that as the Athlete retired from professional sport on 5 February 2017, in practice the disqualification period will coincide in time with the sanction (i.e. the 4-year ineligibility period), creating the fiction that the Athlete served his 4-year ineligibility period right after the use of the Prohibited Substance on 30 June 2013, not being able to compete until her retirement, on 5 February 2017. In addition and for the sake of completeness, the Sole Arbitrator also notes that the disqualification of all the results that the Athlete achieved from the commission of the ADRV until the commencement of the ineligibility period will not affect her main and most relevant results: the gold medal in the 400-metre hurdle event at the 2012 London Olympic Games and the bronze medals achieved at the 2009 and 2011 World Championship.

95. Therefore, given that the first evidence of the ADRV is dated 30 June 2013 (i.e. the date of the first unofficial sample testing), the Sole Arbitrator considers that all the sporting results of the Athlete from 30 June 2013 through to the commencement of the period of ineligibility must be disqualified. In practice, this will mean that her sporting results will be annulled from 30 June 2013 through the date of her retirement (i.e. 5 February 2017).

## IX. COSTS

96. Art. R64.4 of the CAS Code provides:

*“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 CAS 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. Furthermore, Art. R64.5 of the CAS Code establishes:

*“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. Having taken into account the outcome of the arbitration, in particular that the Claimant’s request for arbitration has been totally upheld, and considering the financial resources of the parties as well as their conduct within this proceedings, the Sole Arbitrator deems it fair and reasonable that the costs of the arbitration, in the amount that will be established and served to the Parties by the CAS Court Office, are borne in full by the First Respondent, as requested by the Claimant.



99. In addition, bearing in mind the conduct and the financial resources of the Parties, and the discretion that he has pursuant to Art. R64.5 of the CAS Code, the Sole Arbitrator finds fair and reasonable that each Party bears their own legal fees and other expenses incurred in connection with this proceeding.

100. The present award may be appealed to CAS pursuant to Rule 42 of the IAAF Rules.

\* \* \*

**ON THESE GROUNDS**

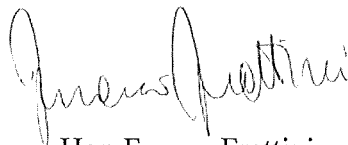
**The Court of Arbitration for Sport rules that:**

1. The request for arbitration filed by World Athletics against the Russian Athletics Federation and Natalya Antyukh is upheld.
2. Natalya Antyukh is found guilty of an anti-doping rule violation under Rule 32.2(b) of the IAAF Competition Rules 2012-2013.
3. Natalya Antyukh is sanctioned with a period of ineligibility of four (4) years starting from the date of this award.
4. All competitive results achieved by Natalya Antyukh from 30 June 2013 through the commencement of the period of ineligibility are disqualified with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.
5. The cost of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by the Russian Athletics Federation.
6. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

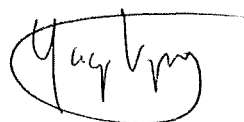
Date: 7 April 2021

**THE COURT OF ARBITRATION FOR SPORT**



Hon Franco Frattini

Sole Arbitrator



Mr Yago Vázquez Moraga

*Ad hoc* Clerk