CAS 2020/O/6761 World Athletics v. Russian Athletics Federation & Andrey Silnov

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

Mr Andrey Silnov, Dolgoprudny, Russia

Represented by Ms Daria Untova, Mr Daniil Gabdrakhmanov, and Ms Bilya Lokova Attorneys-at-Law with Trio Legal in Moscow, Russia

Second Respondent

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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. Mr Andrey Silnov (the "Second Respondent", "Mr Silnov" or the "Athlete") is a 36-year-old retired International-Level Russian high jumper. He won the gold medal at the 2008 Beijing Olympic Games, and he also participated in the London 2012 Olympic Games.

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 ("Moscow Laboratory"), 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 BEREG-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 him, 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 two samples of the Moscow Washout Schedules were listed as belonging to the Athlete, dating from 8 and 18 July 2013. In this correspondence, the AIU invited the Athlete to provide his explanation with regard to the asserted ADRV.

13. On 21 June 2019, the Athlete submitted a brief to the AIU, denying the allegations which in his view were based on one dubious file (EDP0036). Furthermore, in his brief the Athlete requested the AIU to assist him to obtain certain evidence from WADA.

14. On 17 July 2019, the AIU informed the Athlete that it maintained its assertion that he had committed an ADRV and that his 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 31 July 2019, the Athlete informed the AIU that he preferred his 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, his 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 and that this procedure be referred to a Sole Arbitrator in accordance with IAAF Rule 38.3.

20. 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 8 July 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."

21. On 17 February 2020, the CAS Court Office granted the Respondents a 30-day deadline as from the receipt of the Request of Arbitration to file their Answers.

22. On 20 February 2020, the Athlete sent an email to the CAS in which he confirmed he had received the CAS correspondence of 17 February 2020. In this correspondence the Athlete also informed the CAS that he had not yet received from RUSAF the copy of the Request for Arbitration and its exhibits.

23. On 18 March 2020, the Athlete sent an email to the CAS informing that he had received the copy of the Request for Arbitration with its exhibits on 11 March 2020 and requesting the CAS Court Office to confirm whether the deadline for the filing of his answer started on that date.

24. Also on 18 March 2020, the CAS Court Office confirmed that the deadline for the filing of his Answer started as from 11 March 2020.

25. On 23 March 2020, RUSAF informed the CAS 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"*.

26. 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 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.

27. On 13 April 2020, the Athlete requested an extension of time to file his Answer to the Claim.

28. On 20 April 2020, the Claimant submitted its comments with regard to the Athlete's request for a extension of the deadline to file his Answer. In this correspondence the Claimant noted that the Athlete's deadline for the filing of his Answer had expired on 10 April 2020, thus before the filing of his request for extension of this deadline.

29. On 6 July 2020, the Athlete's counsel recorded her appearance in the procedure and requested that the deadline to file an Answer be extended until 15 August 2020.

30. On 8 July 2020, the First Respondent informed the CAS Court Office that it did not object to the Athlete's request for an extension of his deadline to file the Answer.

31. On 9 July 2020, the Claimant informed the CAS Court Office that it would defer to the Sole Arbitrator's determination the decision on the Second Respondent's request for an extension of his deadline to file the Answer.

32. On 10 July 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to grant to the Second Respondent an extension to file his Answer until 15 August 2020.

33. On 14 July 2020, the Second Respondent informed the CAS Court Office that he considered necessary to hold a hearing in the present case.

34. On 17 July 2020, the Claimant informed the CAS Court Office that it considered that a hearing was necessary in the present case.

35. On 20 July 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this procedure.

36. On 10 August 2020, the Second Respondent requested a second extension for the filing of his Answer until 25 August 2020, arguing that he could not obtain certain information and documents that were in possession of the Claimant and that were necessary for his defence.

37. On 12 August 2020, the Claimant informed the CAS Court Office that it had provided the Athlete with access to the data that he had requested on 10 August 2020. Furthermore, in this correspondence the Claimant informed the CAS Court Office that it did not object to the extension of the Athlete's deadline for the filing of his Answer to the Request for Arbitration.

38. On 14 August 2020, the Second Respondent filed a request for document production, by means of which he requested the Sole Arbitrator to order the Claimant to produce the following documents:

> *"a.* ***Doping control forms/doping test results/testing authority information for all Mr Silnov's doping tests conducted from 1 January 2004 to 31 December 2016***
>
> *Mr Silnov has previously requested these documents from the Russian Anti-Doping Agency ("RUSADA").*
>
> *RUSADA provided Mr Silnov with a table listing some of his doping tests (**Exhibit 1**), as well as several doping test forms. Mr Silnov identified discrepancies between*

*the information produced by RUSADA and the ADAMS information. In particular, one doping test result listed by RUSADA (i.e. the test of 20 November 2011) is not recorded in ADAMS (**Exhibit 2**). Conversely, ADAMS contains information about doping tests, which are missing from the documents produced by RUSADA. Therefore, Mr Silnov requires additional information and documents to verify all of his doping test results.*

b. Laboratory Documentation Packages ("LDPs") where available or any information and documents recording collection, custody and laboratory analysis of Mr Silnov's samples collected on 25 July 2008 in London and during the Beijing Olympic Games in 2008 ("Beijing Games")

*According to Mr Silnov's ADAMS, he was tested on 25 July 2008 in London (**Exhibit 2**). Mr Silnov's ADAMS, however, does not contain the results of this test (**Exhibit 2**).*

Mr Silnov clearly recalls that a doping control officer escorted him to a mirror room, where a urine sample was taken from him, after his victory at the Beijing Games. However, no information about this test is recorded in ADAMS (Exhibit 2).

LDPs for (or any other available information about) these doping tests are relevant to present proceedings since Dr Rodchenkov, the key witness for WA, alleges that Mr Silnov used oxandrolone shortly or immediately before the Beijing Games.

c. Documents on retesting of Mr Silnov's urine sample submitted at the Beijing Games in 2008 if available

1,053 out of 4,800 samples submitted at the Beijing Games were later retested using new testing methods.2 Documents on retesting of Mr Silnov's urine sample collected at the Beijing Games are relevant for the reason outlined in section 13(b) above.

d. LDP or any information and documents recording collection, custody and laboratory analysis of Mr Silnov's sample collected on 13 July 2013, and confirmation whether B-sample is available for inspection/retesting

*According to Mr Silnov's ADAMS, Mr Silnov's uriñe sample was collected on 13 July 2013. Mr Silnov's ADAMS, however, does not contain the result of this test (**Exhibit 2**).*

*WA's charges are based on Mr Silnov allegedly being on the Moscow Washout Schedule ("**Schedule**"). According to the Schedule, Mr Silnov's unofficial urine samples of 8 and 18 July 2013 allegedly contained traces of prohibited substances. WA surprisingly did not mention the test of 13 July 2013 in its Request for Arbitration despite its apparent relevance.*

The results of Mr Silnov's urine test of 13 July 2013, as well as the entire respective LDP and/or any available information, are of direct relevance to the central factual dispute in this case and should be made available to Mr Silnov promptly.

e. ***A full copy of Athlete's Biological Passport ("ABP") of Mr Silnov***

An excerpt from the ABP is available on ADAMS, however, it does not contain steroidal profile of Mr Silnov. This information is required for expert evaluation of the washout process described in the Schedule with respect to Mr Silnov.

f. ***Lists of authorized athlete's representatives for 2008 – 2013 maintained by IAAF and documents confirming identity of Mr Silnov's authorized athlete representative in 2008 – 2013***

These documents are needed to verify Dr Rodchenkov's allegation with respect to the alleged involvement of Mr Silnov's manager in "under-the-table" urine testing in 2008."

39. Also on 14 August 2020, the CAS Court Office informed the Parties that the Athlete's request for an extension of time until 25 August 2020 for the filing of his Answer had been granted by the Sole Arbitrator.

40. On 21 August 2020, the Claimant filed its response to the Athlete's document request, in which it asserted that such request did not meet the requirements established by Art. R44.3 of the CAS Code and therefore should be dismissed.

41. On 25 August 2020, the CAS Court Office informed the Parties that the Sole Arbitrator rejected the Athlete's request for documents production at this juncture, without detriment to the Athlete's right to renew his request at the hearing, showing the relevance and credible justification for the requested documents.

42. Also on 25 August 2020, the Athlete requested a further extension of his deadline to file the Answer until 4 September 2020.

43. On 27 August 2020, the Claimant informed the CAS Court Office that it deferred to the Sole Arbitrator as to whether the Athlete's further extension should be granted or not.

44. On 31 August 2020, the CAS Court Office informed the Parties that the Athlete's request for additional time to file his Answer had been partially granted and that the Athlete was authorized to file his Answer until 3 September 2020.

45. On 3 September 2020, the Athlete filed his Answer to the Request for Arbitration, in which he requested the Sole Arbitrator to:

"a. dismiss WA's case in its entirety;

b. rule that the Athlete did not commit the alleged ADRV;

c. rule that the arbitration costs shall be borne by WA;

d. order WA to reimburse the Athlete's costs incurred as a result of these proceedings;

e. rule that WA's costs shall be born entirely by the WA".

46. On 11 September 2020, the Claimant filed a response brief with the CAS addressing the content of the Athlete's Answer. Furthermore, with this brief the Claimant submitted a written statement of Mr Aaron Richard Walker (Deputy Director of WADA's Intelligence and Investigations Department) and Dr Julian Broséus (Principal Data and Scientific Analyst) regarding the case of the Athlete.

47. On 20 September 2020, the Athlete filed a brief with the CAS in which he objected to the admissibility of the Claimant's 11 September 2020 submission.

48. On 25 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.

49. On 30 September 2020, a hearing was held by videoconference with the following persons in attendance:

a) For the Claimant:

- Mr Ross Wenzel, counsel for the Claimant
- Mr Nicolas Zbinden, counsel for the Claimant
- Mr Huw Roberts, counsel for WA's AIU
- Dr Rodchenkov, witness
- Mr Aaron Walker, expert

b) For the Second Respondent:

- The Athlete
- Ms Daria Untova, counsel for the Athlete
- Mr Daniil Gabdrakhmanov, counsel for the Athlete
- Ms Bilya Lokova, counsel for the Athlete
- Mr Alexander Shiskin, Russian interpreter

50. In addition, Mr Brent J. Nowicki, Managing Counsel, and Mr Yago Vázquez Moraga, *ad hoc* Clerk, assisted the Sole Arbitrator at the hearing.

51. At the outset of the hearing, the Second Respondent reproduced his request for documents production. The Claimant was given the opportunity to submit its position with regard to the Second Respondent's request. 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 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 Dr Rodchenkov, the Parties examined Mr Aaron Walker. Afterwards, the Athlete was examined by the Parties. Finally, the Parties were invited to give their closing statements.

52. During the hearing the Parties had the opportunity to present their case, to submit their arguments, examine the witnesses, answer the questions posed by the Sole Arbitrator and submit their final pleadings. At the end of the hearing the Parties confirmed that their right to be heard and to equal treatment had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

53. 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

54. In essence, WA submits that:

- WA asserts that the Athlete committed one or more ADRVs in 2013. In this regard, WA affirms 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 two unofficial samples were listed in the Moscow Washout Schedules as belonging to the Athlete, which would date from 8 and 18 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 three prohibited substances (Methasterone, Methenolone and Formestane).

- WA sustains that it has been established through reliable means that the Athlete used prohibited substances and that he 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 the Moscow Washout Schedules, which comprised athletes who were known to be following a doping programme.

  - Furthermore, it indicates that the Athlete was using three prohibited substances in the lead-up to the Moscow World Championship.

  - The Athlete's name appears twice in the Moscow Washout Schedules, each time with an indication of the presence of a prohibited substances. In addition, both samples evidence a washing-out of the long-term metabolite of Methasterone.

  - Dr Rodchenkov's statements confirm that the Athlete was following a doping programme.

- 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 three) 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. 8 July 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

55. 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 submission.

C. The Athlete

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

- The Athlete denies having committed any ADRV and holds that the Claimant has failed to discharge its burden to prove the commission of alleged ADRV to the comfortable satisfaction of the Sole Arbitrator. In this regard, he holds that (i) the Claimant must establish the Athlete's guilt in the purported ADRV, (ii) the evidence against him must be proportionate to the seriousness of the asserted ADRV and (iii) apart from the two entries of the Moscow Washout Schedules with the Athlete's last name, the Claimant must produce credible corroborative evidence of the Athlete's alleged ADRV. In this respect, the Athlete maintains that the evidence produced by the Claimant is insufficient and lacks credibility.

- The Athlete holds that Dr Rodchenkov's statements is a hearsay evidence, which is inaccurate and based on second-hand information. In his view, Dr Rodchenkov does not provide particulars of the Athlete's alleged involvement in a doping scheme. In this respect, the Athlete affirms that Dr Rodchenkov's allegations concerning his alleged participation in an unofficial washout testing program to prepare the 2008 Beijing Olympic Games is inaccurate. Contrary to what Dr Rodchenkov affirms, the Athlete was "not slotted" to compete at the Beijing Olympic Games due to his fourth place at the Russian Athletics Championships in Kazan.

  In this regard, the Athlete notes that the Russian Olympic high jump team was composed on the basis of a "1+2" principle, pursuant to which the winner of the pre-Olympic Russian summer national championship was automatically recommended for the National Olympic team. The second and third members of the National Olympic team were selected by the RUSAF Presidium based on the proposal of the Senior Coaches Council. The rationale behind this principle was to allow those athletes with greater potential to compete at the Olympic Games even in case of an unexpected slip-up at the pre-Olympic Russian nationals. In the case

at hand, his failure in Kazan urged the Athlete and his team to use maximum effort at two remaining pre-Olympic competitions (Norwich Union Grand Prix London and Herculis Monaco) in order to prove the Senior Coaches Council and the RUSAF Presidium that he should have been selected for the National Olympic team. He won both competitions and beat his personal best record (238 cm in London) and hence, the Russian Olympic Committee decided to include him in the National Olympic team.

In the Athlete's opinion, this fact is not consistent with Dr Rodchenkov assumption that he would have begun using oxandrolone after the Kazan fiasco because he did not intend to compete until after the 2008 Beijing Olympic Games. To the contrary, the Athlete's 2008 summer season was one of the most intensive periods of his career. Therefore, assuming that the Athlete wanted to use prohibited substances, which he denies, it was the worst possible time to do that, as he was exposed to doping controls at each competition. Furthermore, during the summer season of 2008 the Athlete conducted two official doping tests, on 25 July 2008 in London and on 19 August 2008 in Beijing, and both tested negative.

On the other hand, the Athlete holds that it is false that Mr Pavel Voronkov was his manager, as Dr Rodchenkov affirms. He affirms barely having known him in 2008 and that his sole exclusive agent from late 2006 up to his retirement was Mr Mikhail Gusev. In line with this, the Athlete denies having given his urine samples to Mr Voronkov, his daughter or anybody else, to conduct "under the table testing". Indeed, Mr Voronkov was the agent of the Athlete's principal competitor, Mr Ivan Ukhov, and hence he would not have any incentive to provide the Athlete any assistance in this regard.

- The Athlete submits that the Moscow Washout Schedules do not prove any ADRV. In summer 2013 the Athlete was in post-surgery recovery, was hesitant that he would be able to compete and had no incentive to use any prohibited substance. In his view, the Moscow Washout Schedules are unreliable and contain inaccurate and conflicting data. The Claimant holds that the Moscow Washout Schedules were prepared to keep track of Russian athletes who participated in the unofficial washout testing scheme before the Moscow IAAF World Championship of 2013. However, due to the fact that in July 2013 he was recovering from a surgery, he did not intend to take part in this competition. In particular, on 31 October 2012 he underwent a surgery on his right Achilles tendon and had been advised by his surgeon not to compete for approximately a year. The Athlete followed this advice and did not compete in summer 2013, with the sole exception of the local Moscow Open Cup – Kutz V.P. Memorial, that took place on 15 July 2013. He jumped 218 cm there, which was uncompetitive. Furthermore, he did not show up for the Russian Athletics Championship in July 2013, a qualifying event for the IAAF World Championship-2013.

- The Athlete remarks that there are no witnesses that claim to have seen him providing his urine for washout testing in July 2013. And that there is no physical evidence showing the specific vessel in which his urine would have been allegedly collected. In line with this, he holds that there is no evidence with respect to the testing method that was used to detect the prohibited substance which were allegedly present in his unofficial samples that were registered in the Moscow Washout Schedules. Indeed, except for Methasterone, in his entries the alleged traces of Methenolone, Formestane are listed together with a question mark. In addition, Formestane may be produced in human body in certain quantities so to establish that an athlete has exogenous Formestane in his system, an isotope ratio mass spectrometry (IRMS) would have to be used. In addition, if the Athlete was engaged in doping for many years, as alleged by Dr Rodchenkov, he would be likely to feature on the London Washout Schedule.

- The Athlete emphasizes that unlike many other Russian athletes accused of participating in the washout testing, during his career he passed numerous doping controls both in Russia and abroad and that he never tested positive. In this regard, the Athlete considers that the Moscow Washout Schedules are inconsistent because he passed an official out-of-competition doping testing on 13 July 2013 with a negative result. If he would have been involved in the washout testing, this doping test would have resulted positive given the purported unofficial test result recording traces of prohibited substances five days before, on 8 July 2013.

- In the Athlete's view, the Claimant's evidence is not proportionate to the seriousness of the alleged ADRV and the sanctions sought. Similarly, he considers that the Claimant has failed to discharge its burden of proving the aggravating circumstances to the standard of comfortable satisfaction. In this respect he considers that, based on the Moscow Washout Schedules, it could only be inferred that the Athlete would have allegedly used Methasterone, because the schedule does not specify the quantity of the other two substances. Therefore, it cannot be established that multiple prohibited substances were used. In line with this, he holds that it has not been established that he was part of a sophisticated doping scheme.

V. JURISDICTION

57. 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."

58. 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.

59. 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

60. 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.

61. Moreover, the Sole Arbitrator finds 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

62. 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."*

63. As an affiliated member of the RUSAF who participated in the official competitions that were organized by it and by WA during his 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."*

64. 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."*

65. 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."*

66. 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. Preliminary issue: grounds for the rejection of the Athlete's request for document production

67. Before entertaining the merits of the case, preliminarily, the Sole Arbitrator shall address the request for the production of documents that was submitted by the Athlete on 14 August 2020. In particular, the Athlete requested that the Sole Arbitrator order the Claimant to produce certain documents that he deemed relevant to substantiate his defence. In this regard, the only documentation produced by the Claimant would have been the Athlete's ADAMS account, which access was granted by the Claimant on 11 August 2020. Conversely, the Claimant requested that this request for production of documents be dismissed, as it considered that such request did not meet the prerequisites established by Art. R44.3 of the CAS Code.

68. The Sole Arbitrator notes that Art. R44.3, para. 1, of the CAS Code, which also applies to the appeal procedure pursuant to Art. R57 of the CAS Code, provides that *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant"*. Therefore, the party requesting the document production shall evidence that (i) the documents are likely to exist, (ii) they are relevant for deciding the matter in dispute and, finally, (iii) the documents at stake are in the custody or under the control of the other party.

69. In the present case, the Sole Arbitrator dismissed the Athlete's request because he found that such request did not meet the prerequisites set forth under Art. R44.3 of the CAS Code. In particular:

- Regarding the *Doping control forms/doping test results/testing authority information for all Mr Silnov's doping tests conducted from 1 January 2004 to 31 December 2016*, the Sole Arbitrator considers such request frivolous. Bearing in mind the limited period of time in which the alleged incidents would have taken place (i.e. July 2013), it is difficult to understand how the Athlete's doping-related documentation for such a broad period would be relevant to assess the facts at stake.

  Indeed, the Athlete has not explained how this documentation could be useful to the subject-matter in dispute or could help him sustain his defence. The Claimant does not question the reported result of any of the official doping tests that the Athlete underwent throughout his sporting career, hence being it difficult to understand the relevance that these documents may have. Therefore, the Sole Arbitrator considers that the Athlete has not demonstrated the relevance of these documents, and therefore his request is dismissed.

- With regard to the *LDPs or the documentation recording collection, custody and laboratory analysis of the Athlete's samples collected on 25 July 2008 in London and during the Beijing Olympic Games of 2008*, the Sole Arbitrator deems this documentation irrelevant for the purpose of deciding the present case.

  First of all, because the ADRV asserted dates from July 2013 and therefore the LDPs of the Athlete's samples that were collected on 25 July 2008 or during the Beijing Olympic Games have nothing to do with the alleged ADRV. Second, given that the Claimant is neither questioning that these official doping tests took place nor that the official results reported were negative, the Sole Arbitrator does not find any reason that could justify the relevance of these documents for the dispute at stake.

  Furthermore, given that it is undisputed that the official results of these official doping tests were negative, no LDP could exist, as laboratories are not required to produce these documentation packages for samples in which no prohibited substance or method or their metabolite(s) or marker(s) has been detected. Moreover, even assuming that these LDPs exist, the Athlete has not proved that they are under the control of the Claimant, which seems doubtful because these documents will ultimately be in the possession of third parties (i.e. the IOC).

  Therefore, the Sole Arbitrator considers that the Athlete has neither proved that these documents are relevant nor established that they are likely to exist and are under the control of the Claimant, as required by Art. R44.3 of the CAS Code. Furthermore, with regard to the rest of the related documentation requested, the Sole Arbitrator considers that such request is extremely vague and imprecise, and hence it is not possible to establish the relevance and availability of these documents.

- Regarding the *documentation related to the retesting of the Athlete's urine sample that was submitted at the Beijing Games in 2008*, the Sole Arbitrator first notes that the Athlete has not demonstrated that this sample would have been retested. Indeed, and for the sake of argument, even assuming that such sample exists and was retested, the corresponding documentation will be in possession of the IOC, as the organizer of the Beijing Olympic Games, and not under the Claimant's control. Furthermore, taking into account the date in which the fact in dispute would have taken place (i.e. July 2013), the Sole Arbitrator considers that the documentation requested is anachronistic and has no relevance. For these reason this request for production of documents is dismissed.

- With regard to the *LDP or any related documentation related to the Athlete's sample that was collected on 13 July 2013, as well as a confirmation of whether a B-sample is available for inspection or retesting* requested, for several reasons the

Sole Arbitrator is of the opinion that this documentation is not relevant for the present case.

First of all, it is undisputed that this official out-of-competition sample tested negative to any prohibited substance, as it was registered in ADAMS. The Claimant does not contest that such result was reported in ADAMS's official registry. To the contrary, what the Claimant contests are the consequences that the Athlete intends to draw from this undisputed fact. At the same time, given the negative result of this official testing, no LDP could exist regarding these samples.

Second, as regards of the availability of the Athlete's B-Sample for retesting or inspection, the Sole Arbitrator considers that it is not necessary to conduct any investigation on the B-sample. In the Sole Arbitrator's opinion, given the uncertainty surrounding the chain of custody of the "official" out-of-competition samples that were taken at that time in Russia and the notorious irregularities that existed in the management and delivery of samples results by the Moscow Laboratory, the content of the B-sample, if it exists, would not be reliable at all and could not corroborate or confirm the authenticity of the result of the A-sample even if no prohibited substance was found in this second sample after its testing.

In this regard, the Sole Arbitrator observes that the Claimant has produced a copy of the doping control form corresponding to this "official" sample collection of 13 July 2013 (Ref. 2818792) that took place in Novogorsk. In line with this, Mr Walker, Deputy Director of WADA's Intelligence and Investigations Department, confirmed that the LIMS data for the Athlete contained the analysis results of that "official" sample, that was reported as negative, as it also occurred with other athletes that featured in the Moscow Washout Schedules.

It shall be noted that at that time the FSB had already developed a sample swapping technique that permitted the removal and replacement of the cap of the sealed B-sample bottle, that allowed the replacement of dirty samples with clean urine that was stored in the "clean urine bank" created at the Moscow Laboratory. Hence, given that the Athlete features in the Moscow Washout Schedules and is precisely being accused of being a "protected athlete" and participating in this doping scheme, it would be consistent to this assertion the fact that the B-sample would also test negative, as this protection scheme was indeed implemented to guarantee such negative result. In these circumstances, the Sole Arbitrator considers that, if the Athlete was a "protected athlete", as the Claimant holds, it will be coherent that his B-sample would also test negative, as in this hypothetical circumstance the Athlete would be engaged in the sample swapping and "under the table" methods that were part of the Washout Testing program. Therefore, the Sole Arbitrator considers that even if the testing of the B-Sample (if it exists) would result negative, this fact would not dispel any of the doubts at stake, as it will not be possible to rely

on this hypothetical piece of evidence to support the Athlete's position given the specific characteristics of the doping scheme at stake. For all these reasons, the Sole Arbitrator considers the Athlete's request inadmissible.

- As regards to the *full copy of the Athlete's Biological Passport (ABP)*, in the Sole Arbitrator's opinion the Athlete has not demonstrated the relevance of such request. In this regard, the Athlete states that he has only had access to an excerpt of the ABP in ADAMS that does not contain his steroidal profile. However, despite arguing that *"this information is required for expert evaluation of the washout process described in the Schedule with respect to Mr Silnov"*, the Athlete does not explain the specific reasons that would justify such necessity. Furthermore, the Claimant clarified that the steroid module of the ABP was introduced in November 2013, hence after the alleged ADRV would have taken place. Consequently, the Sole Arbitrator rejects this request, on the basis of its lack of relevance,

- Finally, the Athlete requests the *lists of authorized athlete's representatives for 2008-2013 maintained by IAAF and documents confirming identity of the Athlete's authorized representative in 2008-2013.* The Athlete wants to have access to these documents to prove that, contrary to what Dr Rodchenkov referred in his written statement, Mr Pavel Voronkov has never been the manager of the Athlete, that was indeed represented by Mr Mikhail Gusev. In the Sole Arbitrator's view, whether or not Mr Voronkov was the manager of the Athlete is not relevant at all. The Claimant itself has acknowledged that this was a mere assumption, and that the relevant issue is the alleged involvement that Mr Vorokov and her daughter had in the alleged collection of the Athlete's unofficial samples. For this reason, the Sole Arbitrator considers that these documents are not relevant for deciding the present case, and therefore the Athlete's request is dismissed.

70. In view of the foregoing, the Athlete's request for document production is dismissed, as it does not meet the necessary requirements established by Art. R44.3 of the CAS Code.

B. The ADRV asserted by WA

71. 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."

72. 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, Methenolone and Formestane were Prohibited Substances.

73. 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."

74. 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."

75. 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).

76. 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). Therefore, when assessing the evidence produced in the present case, the Sole Arbitrator shall apply this substantive and procedural framework.

C. Assessment of the evidence

i. Preliminary remarks

77. 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 two prohibited substances can be inferred. First, the Claimant avers that the fact that the Athlete features on the Moscow Washout Schedules is a clear evidence that he was following a doping programme and that he 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.

78. In contrast, besides denying the charges and the facts asserted, the Athlete sustains that the Claimant has not proved to the comfortable satisfaction of the Sole Arbitrator that he committed the asserted ADRV. To this purpose, the Athlete holds that the Moscow Washout Schedules 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 accurate and should be treated as a hearsay evidence.

79. 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 and the background 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.

80. 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).

81. As it was observed by the Second Respondent at the hearing of this case, the scope of this procedure is not the Russian Doping Scheme but the alleged ADRV at stake. In this respect, 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."*

82. 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 is 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.

83. 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.

84. 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 he used a prohibited substance. Notwithstanding the above, 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.

85. 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).

86. 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 automatically. 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

87. In the Moscow Washout Schedules the following two entries appear under the Russian name of the Athlete ("Сильнов"):

Сильнов 08/07		T/E = 1.4, долгоживущий метаболит метастерона 200 000
Сильнов 18/07		T/E = 2.5, долгоживущий метаболит метастерона 60 000, следы метенолона, форместан?

Its non-contested translation into English reads as follows:

Silnov 08/07		T/E = 1.4, methasterone long-term metabolite 200 000
Silnov 18/07		T/E = 2.5, methasterone long-term metabolite 60 000, traces of methenolone, formestane?

88. The Athlete challenges the reliability of the Moscow Washout Schedules and holds that they contain inaccurate and conflicting data. The Sole Arbitrator does not endorse this opinion. To the contrary, after reviewing (i) the native files of the Moscow Washout Schedules, (ii) the expert report of the IT expert Mr Andrew Sheldon and (iii) the expert opinion of the World Anti-Doping Agency ("WADA") Intelligence and Investigation Department, he has reached the conclusion 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 three different versions/files of the Moscow Washout Schedules that were created or saved on two different dates. In particular, these versions correspond to the following Excel files:

- EDP0030 -Tim_Nagg_04July2013
- EDP0031 -Tim_Nagg_19July2013
- EDP0036 -Tim_Nagg_19July2013

89. 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.

90. It must be also noted that the IT expert, Mr Andrew Sheldon, analyzed each of these files and in pages 50, 51 and 57 of his forensic expert report, which examined the contents of each file, the raw filesystem and the internal metadata associated with each file, the expert 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". 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, as it occurs in the present case.

91. Furthermore, in the Sole Arbitrator's view, the testimony given by Mr Walker, the Deputy Director of WADA's Intelligence and Investigations Department, confirmed the reliability and trustworthiness of the Moscow Washout Schedules, at least with respect to the information referred to the Athlete. In this regard, Mr Walker explained how the Moscow Laboratory used the LIMS to make sure that "protected athletes" will not test positive in case they were subject to a doping control. In particular, contrary to the international laboratory testing standards, which require that the samples and laboratory data are anonymized, in the Moscow Laboratory the names of some of the protected athletes were recorded in the "General Comments" field within the LIMS.

92. As Mr Walker explained, in the present case it was found that raw data and two pdf files with the name of the Athlete in the file name were registered at LIMS. The fact that the name of the pdf files includes the Athlete's name instead of a sample code, makes it reasonable to believe that these documents were related to the analysis of the Athlete's unofficial urine samples, hence corresponding to the two unofficial samples that were registered in the Moscow Washout Schedules under the name of the Athlete.

93. It is worth noting that neither these pdfs nor the associated raw data files could be recovered from the Moscow Laboratory, as they were definitively deleted from the server by an anonymous person. However, the data that still remained in the server proved that:

    - the pdf file named "*silnov_R98_1373430007.pdf*" had been uploaded to the LIMS Server on 10 July 2013, this is two days after the date of the first unofficial sample registered in the Moscow Washout Schedules on 8 July 2013;

    - the pdf file named "*silnov0719_R98_1374307206.pdf*" had been uploaded to the LIMS Server on 20 July 2013, this is two days after the date of the second unofficial sample registered in the Moscow Washout Schedules on 18 July 2013.

94. In the Sole Arbitrator's view, the joint assessment of all these elements in the context of the Russian Doping Scheme described by the McLaren Reports that was happening at that time, leads to the plausible conclusion that these pdf files contained the results of the analysis made on the Athlete's unofficial urine samples. In this regard, the Sole Arbitrator considers that the computer data analyzed by the WADA's Intelligence and Investigations Department corroborates that the entries contained in the Moscow Washouts Schedules referred to unofficial samples from "protected athletes" that were

being collected and analyzed by the Moscow Laboratory in order to track and follow the evolution of their doping programs, to avoid that these athletes tested positive in official doping controls. For all these reasons, the Sole Arbitrator finds that the Moscow Washout Schedules are a reliable evidence for the establishment of an ADRV in the sense of Rule 33.3 of the 2013 Rules.

95. On the other hand, the Claimant has produced the testimony of Dr Rodchenkov as circumstantial evidence addressed to corroborate that the Athlete took part of this washout program and the practice of sample swapping. The Athlete has questioned the reliability of this testimony, holding that it is inaccurate in many material aspects and does not allow to establish his guilt. Furthermore, he has remarked that no witnesses, including Dr Rodchenkov, claim to have seen him providing his urine for washout testing in July 2013. However, after having examined Dr Rodchenkov's statement, the Sole Arbitrator has concluded that in the present case he has been a credible witness, and that for the reasons that will be explained hereunder he has given a truthful statement.

96. One of the reasons given by the Athlete to rebut Dr Rodchenkov's statement is that his testimony on how and why the Athlete was selected for the Russian national team for the 2008 Olympic Games at Beijing would be inaccurate. In this regard, the Sole Arbitrator deems it necessary to note that the facts of the present case refer to the month of July 2013 and not to 2008, and hence the questions related to the alleged involvement of the Athlete on a doping program in 2008, while pertinent for weighting the credibility of Dr Rodchenkov's testimony, are not relevant to decide whether the ADRV asserted has been established or not.

97. This being said, and contrary to what the Athlete sustains, the Sole Arbitrator finds that Dr Rodchenkov's statement on this regard is perfectly congruent with the version of the facts that has been submitted by the Athlete. In particular, Dr Rodchenkov stated that, already in 2008, the Athlete was following doping protocols. The witness explained that initially the Athlete was not selected for the Russian national for the 2008 Olympics because at the Russian Athletics Championships held in Kazan on 19 July 2008 he finished in fourth place. However, Dr Rodchenkov further explained that in a subsequent competition held in London on 25 July 2008 (i.e. the Norwich Union Grand Prix London), the Athlete jumped 238 cm, which was the world's best performance of 2008. As a result, he was ultimately selected for participating with the Russian national Olympic team in the 2008 Olympic Games at Beijing, where he won the gold medal.

98. In his written statement, Dr Rodchenkov affirmed that his "understanding" was that the reason why the Athlete allegedly began using oxandrolone after Kazan was because he did not think that he was going to be selected for the Olympics, and hence he started using this prohibited substance with a view to excrete it for the competitions that were going to be held after the Olympic Games. To the contrary, the Athlete contends that,

as he wanted to participate in the Olympic Games, his *"failure in Kazan urged the Athlete and his team to use maximum effort at two remaining pre-Olympic competitions (Norwich Union Grand Prix London and Herculis Monaco) in order to prove to the Senior Coaches Council and the RusAF Presidium that the Athlete had greater potential and must have been selected for the National Olympic team"*. In the Sole Arbitrator's view, Dr Rodchenkov's testimony is totally compatible with the Athlete's allegations and does not contradict the fact that the Athlete finally had great results in the last two pre-Olympic competitions, that made him be selected for the Russian national team.

99. In this regard, the Sole Arbitrator finds that Dr Rodchenkov simply states that when the Athlete obtained these great results, he was using oxandrolone. In the Sole Arbitrator's opinion, the assumptions that Dr Rodchenkov might have made with regard to the reasons why the Athlete would have allegedly started taking this prohibited substance are irrelevant and do not affect to the reliability of his testimony. Indeed, the fact that in the London competition of 25 July 2008, the Athlete obtained the world's best result for the 2008 Senior Outdoor Season and that he later won the gold medal in the Olympic Games, would be consistent with the use of oxandrolone, an anabolic androgenic steroid, as Dr Rodchenkov contends.

100. Likewise, in the Sole Arbitrator's view, the fact that in the 2008 summer season the Athlete participated in a lot of competitions does not contradict his potential involvement in a doping program like the one that Dr Rodchenkov attributes to the Athlete. The Sole Arbitrator does not share the Athlete's opinion that if he wanted to use prohibited substances *"that was the worst possible time for such conduct as the Athlete was exposed to doping control at each competition"*. On the contrary, considering that the Athlete needed very good results to qualify for the Olympics and be selected for the Russian national Olympic team, this would be precisely the right time in which an Athlete involved in a doping scheme would use prohibited substances, specifically when the aim of the purported doping program was to prevent testing positive in any official doping control. Therefore, the Sole Arbitrator considers that the Athlete's contentions regarding the 2008 Beijing Olympic Games, in no way undermine the credibility of Dr Rodchenkov and that, by contrast, corroborates the witness' statement.

101. In line with this, the Sole Arbitrator considers that the issue of whether at that time Mr Voronkov was the manager of the Athlete or not, is not relevant for establishing the trustworthiness of Dr Rodchenkov's testimony. In the Sole Arbitrator's opinion, the key point in this issue is the fact that the testimony that Dr Rodchenkov gave at the hearing was very detailed, credible and convincing. Dr Rodchenkov explained in a very precise way the telephone call that he received from Mr Voronkov, and clarified that he rarely used to call him to make these types of requests. However, Dr Rodchenkov explained that this was a particular case because, due to the great result that the Athlete had in London, he was included in the list of "protected athletes" and for this reason Mr

Voronkov requested Dr Rodchenkov to analyze the Athlete's urine "under the table", to make sure that he was not going to test positive in an official doping control.

102. In this regard, the Sole Arbitrator finds that Dr Rodchenkov's testimony on the delivery of the samples by Mr Voronkov's daughter was very precise and persuasive. He explained how Mr Voronkov's daughter handed him the unofficial sample and how he went back afterwards to the laboratory and delivered the sample to Dr Sobolevsky for its immediate analysis. He described the physical pattern that the samples followed to the place in which the unofficial analysis would have taken place and recalled that the analysis shown that the Athlete's urine had minor traces of oxandrolone that were going to disappear in a few days, hence allowing the Athlete to compete safely.

103. In this respect, the Sole Arbitrator is of the opinion that the fact that Mr Voronkov was the manager of another high jumper that allegedly was a direct competitor of the Athlete, Mr Ivan Ukhov, lacks any relevance because, as the McLaren Reports refers, the systematic cover up and manipulation of the doping control process implemented in the Russian Doping Scheme was an affair of state, and hence these decisions were centralized and directed by the Russian Ministry of Sport through several liaison persons. In this context, it is perfectly plausible that Mr Voronkov, who was a well-known athletes' representative, would have participated in this doping scheme regardless if he was the Athlete's manager or not.

104. Now focusing on the events that took place in July 2013 in which the Claimant grounds the ADRV asserted, the Sole Arbitrator also finds Dr Rodchenkov's testimony credible. Dr Rodchenkov recognized that he did not meet the Athlete in person. However, he explained that he saw the Athlete through the video-surveillance system of the Moscow Laboratory going in person to the laboratory to deliver his unofficial samples. Pursuant to Dr Rodchenkov statement, at that time (beginning of July 2013) the Athlete was still a "protected athlete" and wanted to compete in the 2013 Moscow World Championship. For this reason he delivered two unofficial samples that were registered in the Moscow Washout Schedules, with the aim of tracking his doping progress. The Athlete wanted to take part in the Russian Athletics Championship that was going to take place on 22 July 2013, that was a qualifying competition for the IAAF Moscow World Championship. However, on 15 July 2013 he competed in the Moscow Open Cup - Kuts memorial, and had a very bad performance, jumping only 218 cm. This result evidenced that he had no chance to compete at a high level in the Russian Athletics Championship of 22 July 2013 and, for this reason, he was removed from the list of "protected athletes" and consequently from the Moscow Washout Schedules. In this context, the Athlete withdraw from participating in the Russian Athletics Championship under the pretext of being in a postoperative period. In the Sole Arbitrator's view, Dr Rodchenkov's statement is consistent with the fact that after 18 July 2013 the Athlete did not feature anymore in the Moscow Washout Schedules, which would confirm that he stopped being a "protected athlete".

105. In line with this, regarding the negative result of the Athlete's official doping control of 13 July 2013 on which the Athlete intends to rely, for the reasons explained above, the Sole Arbitrator deems that this is indeed consistent with the fact that he was a "protected athlete", engaged in the sample swapping and "under the table" methods that were part of the Washout Testing program. For this reason, the fact that the Athlete tested negative in this doping control is irrelevant.

106. The Sole Arbitrator has also taken into account the written statement submitted by the Athlete's surgeon, in which he states that on 3 June 2013, the Athlete complained of severe pain in both calcaneus tendons after training and that for this reason he advised him not to train for a period of 3 months. However, even though that the Athlete affirms that he *"adhered to this advice and did not compete in summer 2013"*, this is not consistent with the fact that he indeed competed in the Moscow Open Cup -Kuts memorial and, as it can be assumed, he would have previously undergone the corresponding training program. At the same time, the fact that the Athlete's surgeon did not appear at the hearing *"due to a conflicting arrangement related to his medical practice"* and hence could not be examined by the Parties and by the Sole Arbitrator, undermines the evidentiary value of his written statement. For this reason the Sole Arbitrator deems Dr Rodchenkov's version of these facts more credible than the one submitted by the Athlete.

107. Finally, the Sole Arbitrator finds that the position that the Athlete has held in this procedure is very telling. The Athlete has simply denied the facts asserted by the Claimant, trying to rely on a purported lack of evidence. However, he has not offered any reasonable or plausible explanation on why he featured in the Moscow Washout Schedules. Indeed, the Sole Arbitrator deems it significant that, as the Athlete recognized at the hearing, he was trained by Mr Evgeny Zagorulko, who was also the coach of the high jumpers Ivan Ukhov, Anna Chicherova and Elena Slesarenko who were sanctioned for having committed ADRVs (see CAS 2018/O/5668, CAS 2016/A/4839 and CAS 2017/O/5332). In the Sole Arbitrator's opinion, this is another circumstantial element supporting the idea that the Athlete was engaged in a doping programme. For this reason, the Sole Arbitrator deems the Athlete's contentions 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 he was indeed engaged in a doping programme.

108. Therefore, taking into account all the foregoing 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.

- Methenolone, which is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List.

- Formestane, which is a hormone and metabolic modulator prohibited under S4.1 of the 2013 WADA Prohibited List.

109. With regard to the Athlete's submission that it is not possible to confirm these results because the testing method that was used to detect the prohibited substances in the washout are unknown and, in particular, if an IRMS was conducted, this submission is flatly dismissed, as it does not stand up to scrutiny. In the Sole Arbitrator's opinion, it is at least paradoxical to pretend that in a concealed unofficial testing addressed to analyse "under the table" urine samples in the context of a doping scheme, the individuals involved in this scheme shall follow the International Standard for Laboratories, adhering to the best practices at results management, documenting all the Washout Testing procedure in order to guarantee the validity of these results. In the Sole Arbitrator's view, this would be tantamount to request the offender to keep a record of his crime. Consequently, this submission is rejected.

110. As a result, the Sole Arbitrator is comfortably satisfied that the Athlete used three different Prohibited Substances between 8 July 2013 and 18 July 2013, and thus that he infringed Rule 32.2(b) of the 2013 Rules.

C. The sanction

111. 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."*

112. 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."*

113. 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)"*.

114. Taking into account the circumstances of the present case, where it has been established (i) that the Athlete used Prohibited Substances within 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 three different Prohibited Substances between 8 July 2013 and 18 July 2013, 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, that the Sole Arbitrator finds appropriate and proportionate to the seriousness of the infringement.

115. Finally, 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."*

116. 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 could 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. Given that in the present case the first evidence of the ADRV dates 8 July 2013 (i.e. the date of the first unofficial sample testing), in principle all the Athlete's sporting results from 8 July 2013 through to the commencement of the period of ineligibility must be disqualified.

117. However, it is 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.

118. 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"*. 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.

119. Notwithstanding this, in 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. Indeed, in this regard the Sole Arbitrator notes that the Athlete did not request to adjust the disqualification period on the grounds of the fairness exception, nor did provide any argument that could lead to such reduction. In any case, the Sole Arbitrator considers that in the case at hand, the retroactive disqualification of the Athlete's competitive results is fair and necessary to restore the

integrity of all the sporting competitions in which the Athlete competed. Deciding otherwise would not be fair at all vis-à-vis the rest of the athletes that did not use Prohibited Substances. In the Sole Arbitrator's view, this would only make sense in case the delay in establishing the ADRV was attributable to the prosecuting body or if any other exceptional circumstance may justify it. However, as explained before, given the complexity of the Russian doping programme, no delay is attributable to the Claimant in this regard.

120. Furthermore, bearing in mind the seriousness of the ADRV, in particular considering that the Athlete used three 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 to restore the integrity of all the sporting competitions in which the Athlete competed and to protect the interest of the sport and of the rest of athletes. For the sake of completeness, the Sole Arbitrator 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 his main and most relevant result: the gold medal at the 2008 Beijing Olympics Games. Therefore, the Sole Arbitrator finds fair the disqualification of the Athlete's results from 8 July 2013 through to the commencement of the period of ineligibility.

IX. COSTS

121. 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.*

122. 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."

123. 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.

124. 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.

125. 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 Andrey Silnov is upheld.

2. Andrey Silnov is found guilty of an anti-doping rule violation under Rule 32.2(b) of the IAAF Competition Rules 2012-2013.

3. Andrey Silnov is sanctioned with a period of ineligibility of four (4) years starting from the date of this award.

4. All competitive results achieved by Andrey Silnov from 8 July 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