CAS 2020/O/6762 World Athletics v. Russian Athletics Federation & Yelena Soboleva

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: 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 Mr Nicolas Zbinden, Attorneys-at-Law with Kellerhals Carrard in Lausanne, Switzerland

Claimant

Russian Athletics Federation, Moscow, Russia

First Respondent

Ms Yelena Soboleva, Moscow, Russia

Second Respondent

* * *

I. PARTIES

1. World Athletics (the "Claimant" or "WA") is the international federation governing the sport of Athletics worldwide. WA is recognized as such by the International Olympic Committee ("IOC"). Its seat and headquarters are in Monaco.

2. The Russian Athletics Federation (the "First Respondent" or "RUSAF") is the national federation governing the sport of Athletics in Russia, with its registered seat in Moscow, Russia. RUSAF is the relevant member federation of WA for Russia, but its membership has been suspended since 26 November 2015.

3. Ms Yelena Soboleva (the "Second Respondent", "Ms Soboleva" or the "Athlete") is a 38-year-old former middle-distance runner of International-Level specialized in 1500 meters distance. She participated in the IAAF World Championship in Athletics of 2005 and 2007 that were held in Helsinki and Osaka, obtaining the fourth and second position in the 1500 meters competition, respectively.

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, and the evidence presented 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 he 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 Athlete's First Anti-Doping Rule Violation of 2007

5. On 26 April 2007, the Athlete provided an Out-of-Competition sample in Zhukovisky, Russia.

6. On 2 September 2007, the Athlete provided and In-Competition sample with code number 3356727 (the "Sample") at the 11th IAAF World Championship in Athletics held in Osaka. The Sample was analysed by the WADA-accredited Laboratory in Tokio and did not reveal the presence of any prohibited substance or method at the time.

7. As a result of a DNA analysis conducted by the International Association of Athletics Federations (the "IAAF") between August 2007 and December 2007 on

a set of athlete's samples (including those collected from the Athlete on 26 April 2007 and 2 September 2007), it was found that the DNA profile of the Out-of-Competition sample provided by the Athlete on 26 April 2007 was different from the DNA profile of the In-Competition A Sample collected from the Athlete on 2 September 2007.

8. On 31 July 2008, the Athlete was provisionally suspended by the All-Russia Athletic Federation (the "ARAF").

9. On 20 October 2008, the Council of the ARAF suspended the Athlete from competition for a period of two years from the date of the Out-of-Competition testing and disqualified her results from the same date (the "Decision of the ARAF").

10. On 18 November 2009, the Court of Arbitration for Sport (the "CAS") rendered an award (the "CAS Award") by means of which it set aside the Decision of the ARAF and sanctioned the Athlete with a suspension of two years and nine months for a tampering violation. The Athlete was ordered to serve a period of ineligibility until 30 April 2011 and all her competitive results since 26 April 2007 were annulled (the "First ADRV").

B. The Russian doping scheme

11. On 19 May 2016, following certain allegations of systemic doping practices in Russia that Dr Grigory Rodchenkov ("Mr Rodchenkov"), the former director of the World Anti-Doping Agency ("WADA") accredited testing laboratory of Moscow, made to the New York Times on May 12th 2016, WADA announced the appointment of Prof Richard McLaren ("Prof McLaren") as an Independent Person (the "IP") to conduct an independent investigation of these allegations.

12. 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."*

13. 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."

14. 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.

15. 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."*

16. On 5 December 2017, the IOC suspended the Russian Olympic Committee with immediate effect.

17. 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"*.

C. The Osaka Allegation from the IAAF

18. On 2 December 2016, upon the WA's request, the WADA-accredited Laboratory in Lausanne conducted a further analysis of the Athlete's Sample and found the presence of the following metabolites of Dehydrochlormethyltestosterone, which is a prohibited substance under the 2007 WADA Prohibited List (S1 – Anabolic Androgenic Steroids):

Sample ID	LAD ID	Gender	Matrix	T/E	Specific Gravity	Result
A3356727	A2016-13430	Unknown	Urine	2.1	1.015	Adverse Analytical Finding
Presence of **Dehydrochlormethyltestosterone** metabolites (**4-chloro-18-nor-17b-hydroxymethyl,17a-methyl-5b-androsta-1,13-dien-3a-ol** and **4-chloro-18-nor-17b-hydroxymethyl,17a-methyl-5b-androst-13-en-3a-ol** and **4-chloro-18-nor-17a-hydroxymethyl,17b-methyl-5b-androst-13-en-3a-ol** and **4-chloro-18-nor-17b-hydroxymethyl, 17a-methylandrosta-4,13-dien-3a-ol** and **4-chloro-18-nor-17a-hydroxymethyl,17b-methylandrosta-4,13-dien-3a-ol**).						

19. On 5 December 2016, the IAAF Anti-Doping Administrator informed the Athlete about the result of the laboratory analysis and invited her to provide before 12

December 2016 a written explanation for that finding and to confirm whether she wanted to have her B sample analysed or not.

20. On 15 December 2016, the IAAF Anti-Doping Administrator informed the Athlete that given that she had not given any explanation for the doping finding and that she had not requested the analysis of her B sample, she had been provisionally suspended from all competitions in athletics pending resolution of her case. Furthermore, in this correspondence the IAAF Anti-Doping Administrator informed the Athlete about her right to request a hearing and the fact that the IAAF had taken over responsibility for coordinating the disciplinary proceedings involving Russian International-Level athletes like her, and that her case was going to be referred to the CAS for adjudication. In this regard, the Athlete was also invited to inform the IAAF about the type of procedure to which she would opt for (i.e. a procedure before a Sole Arbitrator as first instance or before a CAS Panel as a single hearing).

21. On 6 September 2017, given that the Athlete had not given any answer to the previous correspondence of the IAAF, the Anti-Doping Administrator of the Athletics Integrity Unit (the "AIU") invited the Athlete to inform if she admitted the asserted Anti-Doping Rule Violation (the "ADRV") and informed her that if she refused the proposed sanction or if she did not file any reply, her case was going to be referred to the CAS to be adjudicated by a Sole Arbitrator sitting as a first instance hearing panel.

D. The notification from the AIU to the Athlete of an Assertion of one or more ADRVs

22. On 31 May 2019, the AIU sent a notification to the Athlete by means of which it informed the latter that it had decided to assert one or more anti-doping rule violations against her, in the context of the investigations conducted by Prof McLaren. In particular, the assertion of the ADRV was based on the fact that four samples on the Moscow Washout Schedules were listed as belonging to the Athlete, dating from 23 June and 4, 8 and 17 July 2013. In this correspondence, the AIU granted the Athlete a term until 21 June 2019 to provide her position with regard to the asserted ADRV. Furthermore, in this correspondence the AIU also informed the Athlete that the Osaka Allegation and the corresponding results management were ongoing. Finally, the AIU apprised the Athlete of the fact that after the receipt and consideration of her submissions, if any, the AIU was going to refer this matter together with the Osaka Allegation to a CAS arbitrator sitting as a first instance hearing panel, pursuant to Rule 38.3 of the IAAF Competition Rules 2016-2017 (the "2016 Rules").

23. On 1 June 2019, the AIU sent again to the Athlete, to a different email address, its correspondence of 31 May 2019.

24. On 3 June 2019, RUSAF confirmed the AIU that the Athlete had received its correspondence of 31 May 2019.

25. On 17 July 2019, the AIU informed the Athlete that given that it had not received any submission from her within the given deadline, the AIU was going to refer her case to a CAS arbitrator sitting as a first instance hearing panel, in accordance with Rule 38.3 of the 2016 Rules.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

26. On 7 February 2020, pursuant to Art. R47 of the Code of Sports-related Arbitration (the "CAS Code") and Rule 38.3 of the 2016 Rules, 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 Rule 38.3 of the 2016 Rules. 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 anti-doping rule violations in accordance with Rule 32.2(a) and (b) of the applicable Rules.*
>
> *(iv) A period of ineligibility of eight 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 (save, for the avoidance of doubt, for any period of provisional suspension served in respect of the First Violation) shall be credited against the total period of ineligibility to be served.*
>
> *(v) All competitive results obtained by the Athlete from 1 May 2011 through to the commencement of the Athlete's period of provisional suspension on 15 December 2016 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."

27. On 17 February 2020, the CAS Court Office granted the Respondents thirty days as from the receipt of the CAS correspondence to file their Answers.

28. On 19 March 2020, the CAS Court Office requested the First Respondent to inform if it had forwarded the CAS correspondence of 17 February 2020 to the Athlete. Alternatively, the CAS Court Office also invited the Athlete to confirm if she had received the correspondence of 17 February 2020 and to provide with all her contact details and those of her legal representative, if any.

29. On 23 March 2020, the First Respondent sent a correspondence to the CAS informing 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"*. Furthermore, RUSAF confirmed the CAS Court Office that its correspondence of 17 February 2020 had been served to the Athlete. In addition, in this correspondence RUSAF provided the CAS Court Office with the postal address of the Athlete to which all the CAS correspondence could be sent.

30. On 24 March 2020, the CAS Court Office acknowledged receipt of the First Respondent's letter and of the fact that the Athlete had received the CAS correspondence of 17 February 2020 by courier on 29 February 2020.

31. On 28 March 2020, the First Respondent informed the CAS Court Office that it would not pay its share of the advance of costs in this procedure.

32. On 3 April 2020, the CAS Court Office informed the Parties that, despite the content of its previous letter of 24 March 2020, the last attempts to deliver documents to the Athlete at the address provided by the First Respondent had been determined *"incorrect address. No reply on email"*. As a result of this situation, the CAS Court Office further informed the Parties that it was going to continue serving notifications to the Athlete by courier through the First Respondent's mailing address, and also by email to the Athlete's email available (Yelena_Soboleva_1982@mail.ru).

33. On 8 April 2020, the CAS Court Office informed the Parties that the Claimant had paid its share of the advance of costs, and 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.

34. On 16 April 2020, the CAS Court Office informed the Parties that the First Respondent's deadline to Answer the Request for Arbitration had expired on 22 March 2020, and the Second Respondent's one on 30 March 2020. Furthermore, in this correspondence the CAS Court Office informed the Parties that, despite not having received any Answer from the Respondents, the Sole Arbitrator nevertheless was going to proceed with the arbitration, hence inviting the Parties to state whether they considered a hearing necessary in this procedure or not.

35. On 21 April 2020, the Claimant informed the CAS Court Office that it did not consider a hearing necessary in this case.

36. On 22 April 2020, the CAS Court Office informed the Parties that it had not received any comment from none of the Respondents on the need for a hearing and that such silence was considered as that no hearing was necessary.

37. On 8 May 2020, the CAS Court Office informed the Parties that considering that both Respondents were duly notified of this procedure and that none of the Respondents had been engaged in this procedure or provided any form of defence, the Sole Arbitrator considered himself sufficiently well informed to render a decision in this procedure without a hearing. Furthermore, with this letter the CAS Court Office sent the Order of Procedure of the present case to the Parties.

38. On 14 May 2020, the CAS Court Office acknowledged receipt of the Claimant's signed copy of the Order of Procedure. In this letter the CAS Court Office also notified the Parties that a reminder of the Order of Procedure was going to be sent by courier to the First Respondent, who was at the same time requested to forward it to the Athlete. None of the Respondents sent back to the CAS the Order of Procedure signed.

IV. SUBMISSIONS OF THE PARTIES

39. 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

40. In essence WA submits that:

- The Athlete committed two ADRVs in 2007 and 2013, respectively, as a result of (i) the outcome of the retesting of the Sample collected on the occasion of the 11th IAAF World Championship in Athletics held in Osaka in 2007, and (ii) the evidence compiled by Prof McLaren in the Second McLaren Report.

- Regarding the ADRV of 2007, WA sustains that the reanalysis of the Athlete's Sample by the WADA-accredited laboratory in Lausanne revealed the presence of a prohibited substance, dehydrochlormethyltestosterone ("DHCMT"), which is an Exogenous Androgenic Anabolic Steroid prohibited under section S1.1.a of the 2007 WADA Prohibited List. On the grounds of this positive finding, WA considers that it has been established that the Athlete committed a violation of Rule 32.2(a) of the IAAF Competition Rules that were in force at that time (i.e. the IAAF Competition Rules 2006-2007; the "2007 Rules"), which forbids *"the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids"*.

- Furthermore, WA holds that the Athlete committed another ADRV in 2013, as a result of her participation in the Moscow Washout Testing. 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 participation of the Athlete in the Moscow Washout Testing, WA holds that four unofficial samples were listed in the Moscow Washout Schedules as belonging to the Athlete, which would date from 23 June 2013, 4, 8 and 17 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 the prohibited substance Methasterone, which is an Anabolic Androgenic Steroid prohibited under S.1.1.a of the 2013 WADA Prohibited List.

- In this regard, WA holds that it has been established through reliable means that the Athlete used prohibited substances and that she committed a violation

of Rule 32.2(b) of the anti-doping regulations that were in force at that time (i.e. the IAAF Competition Rules 2012-2013, the "2013 Rules"), which prohibits the "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*" In support of this conclusion, WA highlights 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, this ADRV would be demonstrated by the following facts, documents, and circumstances:

  - The Athlete features on the Moscow Washout Schedules, which comprised athletes who were known to be following a doping programme. Indeed, every single athlete on the Moscow Washout Schedules has Prohibited Substances indicated in respect of their samples. In addition, most of these athletes have also been found guilty of ADRVs.

  - The Moscow Washout Schedules indicate that the Athlete was using methasterone in the lead-up to the Moscow World Championships.

  - The Athlete's name does not appear one, but four times on the Moscow Washout Schedules, each time with an indication of the presence of a prohibited substance.

  - The witness statement of Dr Rodchenkov, that would corroborate the involvement of the Athlete in the Moscow Washout Testing scheme.

- With regard to the period of ineligibility, WA sustains that, given that the Osaka Allegations refer to a Sample collected before the Athlete was notified of his First Violation of 26 April 2007, it cannot count as a second violation for the purposes of Art. 10.7 of the WA Anti-Doping Rules that entered into force on 1 November 2019 (the "WA ADR"). However, given that the second ADRV committed in the context of the Moscow Washout Testing would have been committed after notification of the First Violation, WA contends that it would constitute a second violation in accordance with Art. 10.7.1 of the WA ADR, which it holds that should apply instead of the 2013 Rules by virtue of the *lex mitior* principle.

- In this respect, WA contends that pursuant to Art. 10.7.1.c) of the WA ADR, in this case the period of ineligibility for the second ADRV shall be twice the period of Ineligibility that would be applicable to the second ADRV if it was a first ADRV, without taking into account any reduction under Art. 10.6 of the WA ADR. In this regard, Art. 10.2.1. of the WA ADR establishes a sanction of four years for a first violation, where the ADRV does not involve a Specified Substance, unless the athlete can establish that it was not intentional.

- Since in the present case the Second ADRV involves a Non-Specified Substance and taking into account the nature of the asserted ADRV, which was committed as part of a doping scheme, WA considers that the period of ineligibility to be imposed on the Athlete should be of eight years, in accordance with Art. 10.7.1.c) of the WA ADRV. Furthermore, WA holds that the period of ineligibility shall start on the date of the CAS award, with a credit for the provisional suspension that the Athlete has been serving as from 15 December 2016 based on the Osaka Allegations.

- Finally, considering that the Athlete's results were already disqualified from 26 April 2007 until 30 April 2011 as a result of her First Violation, WA seeks the disqualification of her sporting results from 1 May 2011 until 15 December 2016, date of her provisional suspension. 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. The First Respondent

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

C. The Second Respondent

42. Even though the Second Respondent was duly notified of this procedure and invited by the CAS Court Office to file her Answer, she did not engage in this procedure and not file any submission or provide any form of defence whatsoever in this arbitration.

43. In this regard, the Sole Arbitrator is satisfied that WA's assertions of the ADRVs were duly served to the Athlete by the IAAF Anti-Doping Administrator, the AIU and by RUSAF. In this regard, on 3 June 2020 RUSAF confirmed to WA that the Athlete had received the AIU's correspondence of 31 May 2019 with the Notice of Allegation, which was referred to both the Athlete's adverse analytical finding for DHCMT of 2007 (the Osaka Allegation) and to the ADRV asserted in

connection with the Athlete's alleged participation in the Moscow Washout Testing scheme (the "Washout Testing Allegations"). It is worth noting that in this correspondence the AIU fully informed the Athlete of her right to request a hearing as well as the consequences of waiving such right. However, the Athlete decided not to reply to that letter, as well as to the previous correspondence received from the IAAF and from the AIU.

44. Similarly, in this procedure RUSADA confirmed the CAS Court Office that on 29 February 2020 the Athlete received the CAS Correspondence of 17 February 2020, by means of which the Request for Arbitration was served to the Respondents. Furthermore, RUSADA also produced a copy of the relevant courier track report that confirms that a hard copy of the Request for Arbitration and its enclosures was physically delivered to the Athlete. However, the Athlete did not submit any Answer to the Claimant's Request for Arbitration or provide any written submissions or evidence for the Sole Arbitrator to consider.

V. JURISDICTION

45. In accordance with Rule 38.1 of 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"*.

46. In line with this, 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."*

47. The Sole Arbitrator observes that in the present case, 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" with regard to any of the ADRVs, 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.

48. For the sake of completeness, the Sole Arbitrator also observes that, despite being informed about this procedure and being invited to file an Answer, neither of the Respondents appeared before the CAS to challenge its jurisdiction. Therefore, the Sole Arbitrator finds 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

49. 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 that the Request for Arbitration was made in a timely manner.

50. 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 follow that the claim is admissible.

VII. APPLICABLE LAW

51. 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."*

52. As an affiliated member of the RUSAF who participated in the official competitions that were organized by it and by WA during her career, the Athlete is subject to the WA 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."*

53. Likewise, Rule 13.9.5 of WA ADR Rules provides:

> *"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."*

54. 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 foresees:

> *"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."*

55. The alleged ADRVs occurred in 2007 (the Osaka Allegations) and in 2013 (the Washout Testing Allegations). Therefore, taking into account the above-mentioned regulatory framework and considering the time at which the alleged ADRVs occurred, the Sole Arbitrator concludes that the applicable regulations in the sense of Art. R58 of the CAS Code for substantive matters are the 2007 Rules in respect of the Osaka Allegations and the 2013 Rules with regard to the Washout Testing Allegations. In addition, with regard to any procedural issues, the 2016 Rules will apply. Finally, in case these regulations do not rule a specific aspect of the dispute, Monegasque law shall subsidiarily apply.

VIII. MERITS

A. The ADRVs asserted by WA

56. WA charges the Athlete with an alleged violation of Rule 32.2(a) of the 2007 Rules in respect of the Osaka Allegations, as well as with an alleged violation of Rule 32.2(b) of the 2013 with regard to the Washout Testing Allegations.

57. Rule 23.2(a) of the 2007 Rules, defines doping, *inter alia*, as the occurrence of the following ADRV:

> *"(a) the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids.*
>
> *All references to a prohibited substance in these Anti-Doping Rules and the Procedural Guidelines shall include a reference, where applicable, to its metabolites or markers.*
>
> *(i) it is each athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Athletes are warned that they are responsible for any prohibited substance found to be present in their bodies. It is not necessary that intent, fault, negligence or knowing use on an athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a).*
>
> *(ii) except those prohibited substances for which a reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a prohibited substance in an athlete's sample shall constitute an anti-doping rule violation.*
>
> *(iii) as an exception to the general application of Rule 32.2(a), the Prohibited List may establish specific criteria for the evaluation of prohibited substances that can also be produced endogenously."*

58. Separately, Rule 32.2(b) of the 2013 Rules, 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."*

59. In this regard and for the avoidance of any doubt, the Sole Arbitrator notes that the 2013 Rules defines Use as *"The utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance of Method"*.

60. The Sole Arbitrator observes that both the 2007 and 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, both the DHCMT and Methasterone were Prohibited Substances under S1.1.a of the WADA Prohibited List that were in force in 2007 and 2013, respectively, when the Osaka Allegations and the Washout Testing Allegations took place.

61. On the other hand, the Sole Arbitrator notes that both the 2007 and the 2013 Rules establish that the prosecuting authority shall have the burden of establishing the ADRV to the comfortable satisfaction of the adjudicating body bearing in mind the seriousness of the allegation which is made. To this purpose both regulations foresee that the facts related to anti-doping rule violations may be established by *"any reliable means"*. Therefore, in the present case the burden of proving the commission of the asserted ADRVs lies on the Claimant, who shall discharge it to the comfortable satisfaction of the Sole Arbitrator.

62. In this regard, it shall be noted that 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).

63. Notwithstanding the foregoing, 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.

B. Assessment of the evidence

i. Regarding the Osaka Allegations

64. It is undisputed that the reanalysis of the Athlete's Sample (Code Number 3356727) done by the WADA-accredited laboratory of Lausanne revealed the presence of DHCMT, which is a prohibited substance under section S1.1.a of the 2007 WADA Prohibited List. Pursuant to Rule 23.2(a) of the 2007 Rules, the presence of a prohibited substance or its metabolites or markers in the Athlete's Sample constitutes an ADRV. In addition, the Sole Arbitrator notes that in accordance with the 2007 WADA Prohibited List, there is no quantitative threshold applicable to DHCMT, and hence any amount present in the Athlete's bodily sample shall constitute an ADRV.

65. Furthermore, the Sole Arbitrator has also considered that the Athlete neither requested the analysis of her B-Sample nor gave any explanation for the presence of the prohibited substance in her Sample that could exempt the Athlete's from the asserted disciplinary responsibility. In light of the foregoing, the Sole Arbitrator concludes that the presence of the substance DHCMT in the Athlete's urine Sample constitutes an ADRV in accordance with Rule 23.2(a) of the 2007 Rules.

ii. In respect of the Washout Testing Allegations

66. With regard to the Washout Testing Allegations, the Claimant grounds the asserted ADRV in several facts and pieces of evidence from which it infers that the use or attempted use by the Athlete of the prohibited substance methasterone can be established. First, the Claimant avers that the fact that the Athlete features four times on the Moscow Washout Schedules, in each case with a reference to this prohibited substance, is a clear evidence that she was following a doping programme and that she used Prohibited Substances. In this regard, the Claimant submits that the CAS has already examined the reliability of the EDP documents, including the Moscow Washout Schedules, and has considered them to be reliable evidence for the purposes of establishing an ADRV. Furthermore, the Claimant has produced a witness statement from Dr Rodchenkov to corroborate that the Athlete was engaged in an ADRV.

67. In this respect, by reviewing the original EDP documents the Sole Arbitrator has confirmed that indeed, the Athlete features four times in four different versions of the Moscow Washout Schedules, corresponding to the EDP files EDP0030, EDP0031, EDP0035, EDP0036. By way of example, in the original file EDP0036 of the Moscow Washout Schedules, the following entries under the Russian Athlete's name "Соболева" appear:

Соболева	23 июня, закончила 21 (9 дней по одной)	T/E = 35, метастерон (7 000 000)
Соболева	4 июля	T/E = 3, метастерон (600 000), долгоживущий метаболит 800 000
Соболева	8 июля	T/E = 2.3, метастерон (20 000), долгоживущий метаболит 900 000
Соболева	17 июля	T/E = 1.2, долгоживущий метаболит 200 000

Its non-contested translation into English provided by the Claimant reads as follows:

Soboleva	23 June, completed 21 (one each for 9 days)	T/E = 35, methasterone (7 000 000)
Soboleva	04.juil	T/E = 3, methasterone (600 000), long-term metabolite 800 000
Soboleva	08.juil	T/E = 2.3, methasterone (20 000), long-term metabolite 900 000
Soboleva	17.juil	T/E = 1.2, long-term metabolite 200 000

68. As it can be seen, the four entries of the Athlete refer the evidence of methasterone in the Athlete's alleged unofficial samples. In this regard, the Sole Arbitrator also observes that the significant decrease in the analytical parameters of the prohibited substance as well as the major reduction of the T/E ratios, is consistent with a washout pattern and the eventual follow-up of a washout doping protocol.

69. Notwithstanding this, before assessing the reliability of the Moscow Washout Schedules and its evidentiary weight in the case at hand, the Sole Arbitrator deems it convenient to remark that, in his view, 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 may not be sufficient to establish an ADRV.

70. Of course, the existence of systemic doping practices in Russian sport is a relevant fact and part of the background to be considered when assessing the potential commission by an athlete of an ADRV in that context. However, in the Sole Arbitrator's opinion, to impose a sanction on an athlete for an ADRV, it is necessary that the prosecuting body discharges its burden of proof and produces to the comfortable satisfaction of the adjudicating body the necessary evidence to establish the commission of that ADRV in that specific case.

71. In the present case, the Sole Arbitrator has been provided with the native files of the Moscow Washout Schedules as well as with the expert report of the IT expert Mr Andrew Sheldon, and confirms that this evidence is reliable. In this regard, when reviewing these original files, the Sole Arbitrator has observed that the Athlete's name indeed appears in four different versions/files of the Moscow Washout Schedules that were created or saved on different dates. In particular, these versions correspond to the following Excel files:

- EDP0030 – Tim_Nag_04July2013
- EDP0031 – Tim_Nag_19July2013
- EDP0035 – Tim_Nag_04July2013
- EDP0036 – Tim_Nag_19July2013

72. 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, as it is also confirmed by Mr Sheldon's expert report, the dates of creation and modification of the document correspond to the time of the facts at stake. Furthermore, it must be noted that the IT expert, Mr Andrew Sheldon, analyzed each of these files and in pages 50-52 and 56-57 of his forensic expert report, which examined the contents of each file, the raw filesystem and the internal metadata associated with each file, to determine their characteristics and determine its authenticity.

73. 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. Among others in case CAS 2018/O/5667, after a thorough analysis of the EDP documents, the Sole Arbitrator reached the same 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*".

74. In addition, the Sole Arbitrator considers that the fact that the Athlete's name is included in four different entries of the Moscow Washout Schedules referred to a short period of time, and that she appears in four different versions of these Schedules, makes the possibility that her name might have been mistakenly included in the Moscow Washout Schedules extremely unlikely. Therefore, the Sole Arbitrator considers that in the present case, the Moscow Washout Schedules are reliable evidence in the sense of Rule 33.3 of the 2013 Rules.

75. However, as indicated before, depending on the circumstances of the case and the rest of the evidence available, the mere presence of an athlete' name on the Moscow Washout Schedules may not be sufficient to establish that he/she used a prohibited substance. Nevertheless, in the present case the Moscow Washout Schedules are not the sole evidence produced by the Claimant to establish the asserted ADRV. Actually, the Claimant has produced a witness statement of Dr Rodchenkov as circumstantial evidence intended to corroborate that the Athlete

took part in this washout scheme, and offered Dr Rodchenkov's testimony in case a hearing was to be held.

76. The Sole Arbitrator has carefully read Dr Rodchenkov's written statement and deems it consistent with certain objective facts (in particular with the facts surrounding the Athlete's first ADRV of 2007) and the rest of the evidence available, including the Moscow Washout Schedules. In this regard, Dr Rodchenkov affirms recalling that the Athlete's coach, Mr Matvey Telyatnikov, brought Ms Soboleva's urine on 23 June 2013 for analysis to ensure that she was following the correct doping programme. He also refers that the analysis of the sample evidenced the presence of Methasterone in the sample. In this regard, Dr Rodchenkov contends having asked Mr Telyatnikov for details on what was included in the Athlete's alleged doping protocol. After discussing the details of such alleged protocol with him, he found that they were providing prohormones to the Athlete which were supposed to contain desoxymethyltestosterone, but indeed contained Methasterone.

77. It is true that in this case the witness has not been cross-examined by the Parties. However, this circumstance is exclusively attributable to the Respondents, that decided not to participate in this proceeding. Furthermore, even though CAS precedents are not binding and cannot have any direct effect in this procedure, the Sole Arbitrator is satisfied with the fact that the credibility of Dr Rodchenkov has been established in previous cases related with the Russian Doping Scheme, in which the different Panels have given objective reasons to deduct the plausibility of his testimony. For example, in case CAS 2018/O/5704, the Sole Arbitrator noted:

> *"64. Further, the Sole Arbitrator notes that it is uncontested that Dr. Rodchenkov, as director of Moscow Laboratory, was in a position to have access to all relevant data and information necessary to establish the Washout Schedules either himself or get them established by one of his subordinates at the Laboratory. It is moreover uncontested that the Moscow Laboratory was one of the leading anti-doping laboratories in the world and that it had the capacity to detect even the slightest traces of substances in a reliable manner. Finally, it is uncontested that Dr. Rodchenkov had (and still has) the scientific knowledge and experience required to establish the Washout Schedules. Thus, the evidence based on his scientific expertise can be considered reliable as well.*
>
> *65. The Sole Arbitrator holds that no element has been brought forward to validly contest the argument that Dr. Rodchenkov or one of his colleagues from the Moscow Laboratory, in particular Mr. Tim Sobolevsky, set up the London and the Moscow Washout Schedules for the purpose of assuring that the athletes on the list would not test positive at the events they were preparing. In particular, the Sole Arbitrator's notes that no convincing element has been brought forward that would*

explain how Dr. Rodchenkov could have established, after having left his position of/as director of the Moscow Laboratory but before the publication of the results of the London Retests, a list with the names of athletes that allegedly had used prohibited substances, list which then turned out to be largely in line with the list of athletes whose samples, provided at the 2012 London Olympic Games and the 2013 IAAF World Championships, retested positive for exactly those substances referenced in the said Schedules. The fact that the McLaren Evidence contains, as Prof. McLaren has acknowledged during a hearing in other cases (CAS 2017/A/5379 and CAS 2017/A/5422), some errors does not invalidate the reliability of the whole findings as such, as an occasional error in the allocation of the codes in some cases does not affect the veracity of all the codes and the content of the samples allocated to the athletes. In any event, as already mentioned above, in the present matter, the evidence submitted by the IAAF does not contain the code number attributed to the Athlete, but the Athlete's name."

78. Therefore, despite the lack of binding effect of CAS precedents and that this must be assessed on a case-by-case basis, the Sole Arbitrator is satisfied with the fact that in precedent CAS cases other Panels have established the credibility of Dr Rodchenkov's testimony. For all those reasons, in the present case the Sole Arbitrator considers Dr Rodchenkov's witness statement credible and valid piece of evidence to take into account.

79. Last but not least, the Sole Arbitrator finds the Athlete's procedural attitude enlightening. In this regard, since the Athlete become aware in December 2016 of the positive result of the reanalysis of the Sample that she had provided at the 11th IAAF World Championships in Athletics that were held in Osaka, she has not taken any action to challenge that doping finding or demonstrate her lack of fault or negligence in this regard. She also maintained the same passive attitude with regard to the Washout Testing Allegations that were brought against her by the AIU on 31 May 2019, as well as with regard to this arbitration procedure. In addition, the fact that in 2008-2009 the Athlete was sanctioned for an ADRV committed in relation to urine substitution and sample tampering, makes the involvement of the Athlete in the Moscow Washout Testing scheme even more plausible.

80. In summary, in the Sole Arbitrator's view there is no other explanation for the undisputed fact that the Athlete featured in the Moscow Washout Schedules, other than the fact that she was indeed engaged in a doping programme. Therefore, taking into account all the foregoing, the Sole Arbitrator is comfortably satisfied that, as the Moscow Washout Schedules reveal, in summer 2013 the Athlete used Methasterone and hence that committed the ADRV envisaged by Rule 32.2(b) of the 2013 Rules.

C. The sanction

81. The Claimant sustains that since the ADRV that the Athlete committed on 2 September 2007 in relation to the Osaka Allegations, derives from a Sample collected before she was notified of her First ADRV, it cannot count as second violation. In line with this, the Claimant considers that, given that the ADRV that the Athlete committed in the context of the Moscow Washout Allegations took place after the notification to the Athlete of her First ADRV, it then constitutes a second violation for the purposes of art. 10.7 of the WA ADR. In this regard, the Claimant sustains that in the present case the WA ADR shall be applied by virtue of the principle of *lex mitior*, given that if the 2013 Rules were to be applied, this second ADRV would lead to a life ban.

82. After reviewing the sanctioning range envisaged by Rule 40.7(a) of the 2013 Rules for a second ADRV, the Sole Arbitrator also considers that the WA ADR is more lenient for the Athlete than the 2013 Rules, and hence shall be applied in accordance with the *lex mitior* principle. In this regard, Art. 10.7.1 of the WA ADR provides:

> *"For an Anti-Doping Rule Violation that is the second anti-doping offence of the Athlete or other Person, the period of Ineligibility shall be the greater of:*
>
> *a. six months;*
> *b. one-half of the period of Ineligibility imposed for the first anti-doping offence without taking into account any reduction under Rule 10.6; or*
> *c. twice the period of Ineligibility that would be applicable to the second Anti-Doping Rule Violation if it were a first Anti-Doping Rule Violation, without taking into account any reduction under Rule 10.6.*
>
> *The period of Ineligibility established above may then be further reduced by the application of Rule 10.6."*

83. With regard to the ineligibility period to be imposed for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method, Art. 10.2.1 of the WA ADR provides:

> *"10.2.1 The period of Ineligibility shall be four years where:*
>
> *a. The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.*
>
> *b. The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation was intentional."*

84. Taking into account this provision, the Sole Arbitrator is of the opinion that if the ADRV committed by the Athlete with regard to the Moscow Washout Allegations would have been her first doping offence, the period of ineligibility to be imposed on her would be of 4 years, because methasterone is not a Specified Substance and the Athlete has not established that the ADRV was not intentional. To the contrary, in the Sole Arbitrator's opinion, the fact that the Athlete featured in the Moscow Washout Schedules evidences that the ADRV was committed within a doping plan or scheme, being hence clear the intentional nature of her doping violation.

85. As a consequence, the Sole Arbitrator considers that pursuant to Art. 10.7.1c) of the WA ADR, the sanction to be imposed on the Athlete for this second ADRV shall be an eight-year period of ineligibility, starting on the date of notification of the present award, in accordance with Art. 10.10 of the WA ADR and with credit for the period that the Athlete has served after her provisional suspension on 15 December 2016. In this regard, considering all the circumstances at stake and, in particular, the seriousness of the ADRV, that was committed within a sophisticated doping scheme, the Sole Arbitrator finds this sanction appropriate and proportionate.

86. Finally, in accordance with Art. 10.8 of the WA ADR, 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, pursuant to Rule 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise."*

87. Therefore, the general rule is that, in accordance with Art. 10.8 of the WA ADR, in addition to the automatic disqualification of the results in the competition where the Adverse Analytical Finding has been produced, all the Athlete's competitive results obtained from the date of the commission of the ADRV through the start of any provisional suspension or ineligibility period shall be disqualified. In this regard, the Sole Arbitrator notes that the retroactive disqualification of the competitive results of an athlete that has committed an ADRV is fair and necessary to restore the integrity of all the sporting competitions in which he or she competed, rectifying the record books in the interest of sport. Deciding

otherwise would be tantamount to reward the deceiver and would not be fair at all vis-à-vis the rest of the athletes that did not use Prohibited Substances.

88. Notwithstanding this, it is also important not to forget that the primary reason behind this measure (i.e. the disqualification of the sporting results of an athlete that cheated) is not to sanction him or her, but to ensure fair play and equal opportunities for all athletes, annulling those results achieved by those who acted or is reasonable to believe that have acted dishonestly vis-à-vis their competitors, being involved in any kind of ADRV, which is one of the most despicable breaches of the fundamental principles of sport. At the same time, it should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time.

89. 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"*.

90. 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. In this regard, the Sole Arbitrator observes that Art. 10.8 of the WA ADR embodies the fairness principle, empowering the adjudicatory body to adjust the disqualification period when fairness so requires, regardless if the athlete has submitted the fairness exception or not. Therefore, to determine the duration of the disqualification period, the Sole Arbitrator shall take into consideration all the circumstances and factors at hand in order to ensure that the retroactive rectification of the athlete's competitive results produces a fair result.

91. In present case, the Sole Arbitrator observes that the first evidence of the ADRV dates from 2 September 2007 (i.e. the date of collection of the Athlete's Sample). Due to her First ADRV, the Athlete was suspended for a period of two years and nine months (i.e. from 31 July 2008 to 30 April 2011), and her sporting results were disqualified for the period from 26 April 2007 until 30 April 2011 (i.e. almost a four-year period), with all the resulting consequences. This means that all the sporting results achieved immediately after the Sample that tested positive was collected had been already annulled.

92. Taking into account the foregoing, the Sole Arbitrator is of the opinion that the disqualification of the Athlete's sporting results from 1 May 2011 until the day in which she was provisionally suspended (i.e. 15 December 2016) would be excessive and disproportional, in particular taking into account (i) that all her sporting results from 26 April 2007 until 30 April 2011 had been already annulled and (ii) that there is no proof that from that day (i.e. 30 April 2011) until the day in which she was included in the Moscow Washout Schedules (i.e. 23 June 2013) she had used prohibited substances. In these circumstances, pursuant to Art. 10.8 of the WA ADR, the Sole Arbitrator considers that it is fair and reasonable to disqualify all the competitive results that the Athlete obtained from 23 June 2013 (date of her first registry in the Moscow Washout Schedules) until 15 December 2016 (i.e. the day in which she was provisionally suspended).

IX. COSTS

93. 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.*

94. 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."*

95. 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.

96. 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.

97. 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 Yelena Soboleva is upheld.

2. Yelena Soboleva is found guilty of anti-doping rule violations under Rule 32.2 (a) of the IAAF Competition Rules 2006-2007 and under Rule 32.2 (b) of the IAAF Competition Rules 2012-2013.

3. Yelena Soboleva is sanctioned with a period of ineligibility of eight (8) years starting from the date of this award.

4. All competitive results achieved by Yelena Soboleva from 23 June 2013 through the commencement of the Athlete's period of provisional suspension on 15 December 2016 are disqualified with all of the resulting consequences, including the forfeiture of any medals, titles, ranking points and prize and appearance money.

5. The cost of the arbitration, to be determined and served on 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