

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
WORLD ATHLETICS**

Before:  
Mr. Lucas Ferrer (Sole Arbitrator)

**BETWEEN:**

**WORLD ATHLETICS**

**Anti-Doping Organisation**

and

**MARIA GUADALUPE GONZÁLEZ ROMERO**

**Respondent**

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**I. INTRODUCTION**

1. The Claimant, World Athletics (“**WA**”) (formerly International Association of Athletics Federation (“**IAAF**”)), is the International Federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. WA is represented in these proceeding by the Athletics Integrity Unit (“**AIU**”) which has delegated authority for Results Management and Hearings, amongst other functions relating to the implementation of the IAAF Anti-Doping Rules (“**ADR**”), on behalf of WA pursuant Article 1.2 of the ADR.

**THE INDEPENDENT EXPERTS**

2. The Respondent, Ms. Maria Guadalupe González-Romero (“**Ms. Gonzalez**” or “**the Athlete**”) is a 32-year-old race-walker from Mexico.
3. The alleged Anti-Doping Rule Violation (“**ADR Violation**” or “**ADRV**”) relates to an alleged infringement of Article 2.5 of the 2019 ADR for Tampering or Attempted Tampering with any part of Doping Control.
4. What follows below is the decision of the WA Disciplinary Tribunal (“**the Disciplinary Tribunal**”) convened under Article 8.4 of the ADR to determine a potential ADR Violation allegedly committed by Ms. Gonzalez.

## II. **FACTUAL BACKGROUND**

5. On 17 October 2018, the Athlete participated in an Out-of-Competition doping control test in Mexico City and provided a urine sample with reference number 4257309 (“**the Sample**”). Such Sample was then sent for analysis to the WADA-accredited laboratory in Montreal, Canada (“**the Laboratory**”).
6. On 16 November 2018, the AIU notified the Athlete that the Laboratory recorded an Adverse Analytical Finding (“**AAF**”) with the presence of a Prohibited Substance or its Metabolites or Markers, namely epitrenbolone (a metabolite of Trenbolone), with an estimated concentration of 1ng/ml. Trenbolone is a Prohibited Exogenous Anabolic Androgenic Steroid included in Section S1.1a of the WADA 2018 Prohibited List. It is a Non-Specified Substance prohibited at all times. Moreover, the AIU notified Ms. Gonzalez that a Provisional Suspension had been imposed with an immediate effect. Additionally, the AIU requested the Athlete to provide an explanation and informed her about her right to request the opening and analysis of the B sample.
7. On 23 November 2018, the Athlete provided her response including an explanation for the AAF (“**First Explanation**”):
  - The Athlete indicated that she has never used any substance to obtain a possible advantage against her opponents. Thus, her achievements have always been obtained fairly.

- The Athlete stressed that the only explanation for her AAF would be through the consumption of contaminated meat.
  - The Athlete explained her ingestion of meat in the days prior to the sample collection as follows: on 14 October 2018, she consumed approximately 200 grams of “meat cut (steak)” at the Picanha Grill restaurant; on 15 October 2018, “beef filet with vegetables”; on 16 October 2018, five “tacos al pastor” (marinated pork in chili sauce, with tortillas); and her breakfasts were made of “fruits and eggs”.
  - The Athlete also requested the opening and analysis of the B sample.
8. On 3 December 2018, the AIU informed the Athlete that the analysis of the B sample confirmed the presence of epitrenbolone, a metabolite of Trenbolone.

#### **A. First Proceedings Before the Disciplinary Tribunal**

9. On 10 December 2018, the AIU sent the Athlete a Notice of Charge (“**First Charge**”) for violations of Article 2.1 and Article 2.2 of the ADR (ed. 2018).
10. On 17 December 2018, the Athlete did not accept the First Charge and reiterated that the only explanation for the AAF was her consumption of meat contaminated with Trenbolone. Moreover, the Athlete requested that the matter be resolved by a hearing before the Disciplinary Tribunal.
11. On 21 February 2019, the AIU filed its Brief and Exhibits before the Disciplinary Tribunal.
12. On 28 March 2019, the Athlete filed her Answer Brief and accompanying Exhibits before the Disciplinary Tribunal. In the Athlete’s Answer Brief, she claimed that, after being diagnosed with iron-deficiency anaemia on 4 September 2018, she consumed beef liver for breakfast on 14, 15 and 17 October 2018 (at Las Gueras restaurant), five tacos al pastor (marinated pork in chilli sauce) on 16 October 2018 and 200 grams of beef rump cap for lunch at the Picanha Grill with her friend Brenda Villegas (“**Ms. Villegas**”) on 14 October 2018.

13. In support of these facts, the Athlete submitted *inter alia* the following evidence: a hospital report stating that she allegedly suffers from iron-deficiency anemia and the receipts from Picanha Grill and Las Gueras restaurants.
14. On 9 May 2019, the Disciplinary Tribunal rendered its decision (“**First Decision**”). The First Decision rejected the Athlete’s argument regarding the meat contamination and found that the Athlete had committed an ADRV. Then, the Disciplinary Decision declared her ineligible for a period of four years commencing on the date of the First Decision, with credit for the Period of Provisional Suspension served by the Athlete beforehand. Moreover, the Athlete’s results achieved from 17 October 2018 were also disqualified with all related consequences, including forfeitures of all medals, points and prize money.
15. Furthermore, the Sole Adjudicator of the First Decision reached the following conclusion, which shall be noted (para. 85): *“The Athlete’s explanation of how the prohibited substance entered in her system relates to the ingestion of meat. However, this explanation together with the evidence produced by the Athlete is not convincing. The Athlete provided contradicting versions of events during the proceedings, which are themselves contradicted by the evidence provided, some of which was fabricated. During the proceedings the Sole Adjudicator appreciated certain elements that, ever considered in isolation, were crucial to consider favourably the version of the Athlete. Considering them jointly with the evidence provided at the hearing leaves no doubt that the Athlete’s explanation is not reliable”*.

## **B. Proceedings Before the Court of Arbitration for Sport**

16. On 7 June 2019, the Athlete filed an appeal before the Court of Arbitration for Sport (“**CAS**”) against the First Decision.
17. The Athlete, filed before CAS, among other evidence, an Expert Report on polygraph assessment from Rodolfo Prado Pelayo dated 13 June 2019 with her Appeal Brief, to determine the veracity of certain disputed events *inter alia* whether she had taken

Trenbolone or not, how the Sample was taken and the strategies for her defense in the proceedings of first instance.

18. On 11 November 2019, a hearing before CAS was held in Lausanne, Switzerland.

19. On 2 July 2020, the CAS Panel issued the award *CAS 2019/A/6319 Maria Guadalupe González Romero v. IAAF* (“**the CAS Decision**”), by means of which the Athlete’s appeal was dismissed and the decision rendered by the Disciplinary Tribunal dated 9 May 2019 confirmed. The CAS Decision established, *inter alia*, the following conclusions (paras. 45 and 81):

*“45. The Appellant stated that she genuinely and expressly accepts that she lied and presented and relied upon fabricated documents before the IAAF Disciplinary Tribunal. She explained that her former legal counsel explained to her that this was the only way to defend herself and that there were no other option for her. The Appellant expressed her sincere apologies and her regrets to the Respondent and to the Panel.”*

*“81. The Appellant admitted freely before the Panel, and in her Appeal Brief, that she had not told the truth at the hearing in first instance before the IAAF Disciplinary Tribunal, that her evidence had been falsified, and that documents and evidence were fabricated. The Appellant apologised for her conduct and for what she had said and done before the IAAF Disciplinary Tribunal, but said that she was following advice for her then-legal team.”*

### **C. Second Charge**

20. On 13 July 2020, the AIU, on behalf of WA, sent the Athlete a Notice of Charge for a violation of Article 2.5 of the ADR (ed. 2019 for Tampering or Attempted Tampering with any part of Doping Control (“**Second Charge**”).

21. Specifically, the Second Charge was issued by the AIU in relation to the explanations and evidence submitted by the Athlete to the AIU and to the Disciplinary Tribunal concerning the violation of Articles 2.1 and 2.2. of the ADR.

22. On 6 August 2020, the Athlete, via her appointed representative Mr. Adrian Camargo, denied the Second Charge and requested that the matter be determined by a hearing before the Disciplinary Tribunal.

23. The matter was therefore referred to the Disciplinary Tribunal for adjudication and determination of potential consequences of the alleged violation of Article 2.5 of the ADR.

### III. PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

24. On 2 September 2020, a Preliminary Meeting was convened before the appointed Panel Chair of the Disciplinary Tribunal, Mr. Lucas Ferrer (“**the Sole Arbitrator**”). After consulting with the parties during the Preliminary Meeting, the Sole Arbitrator issued Directions for the present procedure, which state in relevant part:

*“1.1. This matter shall be heard by the Disciplinary Tribunal Chair sitting alone, pursuant to the parties’ agreement and in line with arts. 8.5.1 and 8.7.2.(a) ADR;*

*1.2. By **5pm GMT on Wednesday 14 October 2020**, the AIU shall submit a brief with arguments on all issues that WA wishes to raise at the hearing and written witness statements from each fact and/or expert witness that the AIU intends to call at the hearing, setting out the evidence that WA wishes the Disciplinary Tribunal to hear from the witness, and enclosing copies of the documents that the AIU intends to introduce at the hearing, as prescribed in art. 8.7.2(d)(i) ADR;*

*1.3. By **5pm GMT on Wednesday 11 November 2020**, the Athlete shall submit an answer brief, addressing the AIU’s arguments and setting out any arguments on the issues that the Athlete wishes to raise at the hearing, as well as written witness statements from the Athlete and/or from each other witness (fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes the Disciplinary Tribunal to hear from the witness, and enclosing copies of the documents that the Athlete intends to introduce at the hearing, as prescribed in art. 8.7.2(d)(ii) ADR;*

*1.4. By 5pm GMT on Wednesday 25 November 2020, the AIU may submit a reply brief, responding to the Athlete's answer brief and producing any rebuttal witness statements and/or documents, as prescribed art. 8.7.2(d)(iii) ADR;*

*1.5. The hearing shall be held the week of 7 December 2020. Upon request by the Athlete, it is the intention of the parties and the Disciplinary Tribunal to hold the hearing in person in London, as long as the circumstances related to the COVID-19 pandemic allow”.*

25. On 14 October 2020, the AIU filed its Brief on behalf of WA in accordance with paragraph 1.2 of the Directions dated 2 September 2020.

26. On 11 November 2020, the Athlete submitted her Answer Brief.

27. Due to the COVID-19 Pandemic and the travel restrictions imposed by health authorities the hearing that was scheduled to take place in London the week of 7 December 2020 was postponed by the Sole Arbitrator until 5 March 2021. The parties were offered the possibility to hold a hearing by videoconference, but the Athlete insisted on several occasions her preference for the hearing to be held in person.

28. Due to the ongoing pandemic, it was not possible to hold an in-person hearing on 5 March 2021 and the Sole Arbitrator postponed the hearing once more until 9 July 2021.

29. On 9 June 2021 both parties and the Sole Arbitrator held a meeting by video conference to discuss the status of the proceedings. After having exhausted all possibilities to hold a hearing in person in London, the Sole Arbitrator communicated to the parties that, in view of the travel and logistical restrictions arising from the ongoing COVID-19 pandemic, the hearing should not be delayed further and was to be held by videoconference. Both parties agreed and the hearing was finally scheduled to take place on 9 July 2021.

30. On 9 July 2021, the hearing was held via videoconference. The Disciplinary Tribunal was composed of Mr. Lucas Ferrer as Sole Arbitrator and assisted by Sport Resolutions, the Secretariat to the Disciplinary Tribunal.

31. The following individuals were present:

For WA: Mr. Tony Jackson, Deputy Head of Case Management  
Mr. Ross Wenzel, Legal counsel  
Ms. Annalisa Cherubino, Case Manager Assistant

For the Athlete: Mr. Adrian Camargo, Legal counsel  
Ms. Elvira Margarita Villalpando Badillo, Translator  
Ms. Maria Guadalupe Gonzalez Romero, the Athlete

#### IV. JURISDICTION

32. The Parties do not dispute the jurisdiction of this Tribunal to hear this case.

33. In any case, the Sole Arbitrator notes the establishment of the Disciplinary Tribunal's jurisdiction over this particular matter begins with Article 1.2 of the ADR, which states as follows:

*"1.2 In accordance with Article 16.1 of the 2017 Constitution, World Athletics established an Athletics Integrity Unit ("**Integrity Unit**") with effect from 3 April 2017 whose role is to protect the integrity of Athletics, including fulfilling World Athletics' obligations as a Signatory to the Code. World Athletics has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanctions and Appeals. The references in these Anti-Doping Rules to World Athletics shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit).*

(...)



*1.4 World Athletics has established a Disciplinary Tribunal to hear Anti-Doping Rule Violations under these Anti-Doping Rules.”*

34. The application of the ADR to the Athlete is set out in Article 1.6 of the ADR:

*“1.6 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of their membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:*

*a. all Athletes, Athlete Support Personnel and other Persons who are members of a Member Federation or of any member or affiliate organisation of a Member Federation (including any clubs, teams, associations or leagues);*

*b. all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) World Athletics (ii) any Member Federation or any member or affiliate organization of any Member Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;(…)”*

35. Additionally, Article of 1.8 the ADR specifies those athletes that are classified as International-Level Athletes for the purpose of the ADR as follows:

*“1.8 Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International-Level Athlete ("International-Level Athlete") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes shall apply to such Athletes:*

*(a) An Athlete who is in the International Registered Testing Pool;*

*(…)*

*(c) Any other Athlete whose asserted Anti-Doping Rule Violation results from (i) Testing conducted under the Testing Authority of World Athletics; (ii) an investigation conducted by World Athletics or (iii) any of the other circumstances in which World Athletics has results management authority under Rule 7;*

*(...)*”.

36. In line with Articles 1.6 and 1.8 of the ADR, at all material times the Athlete was a registered member of the Federation of Mexican Athletics Association. She competed in competitions organised, convened and authorized by WA. The Athlete was also part of the International Registered Testing Pool. Hence, the Athlete is an International-Level Athlete subject to, and bound to comply with, the ADR.

37. Therefore, the Disciplinary Tribunal has jurisdiction by virtue of Article 8.1(a) of the ADR, which establishes the Tribunal’s jurisdiction where *“an Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete...”*

## **V. APPLICABLE LAW**

38. The parties do not dispute the applicability of the ADR, specifically the 2019 version in force at the time the ADRV occurred.

39. Article 2 of the ADR specifies the circumstances and conduct that constitute ADR violations. This includes Article 2.5 which provides:

### ***“2.5 Tampering or Attempted Tampering with any part of Doping Control***

*Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness.”*

40. In turn, Tampering is defined by the ADR as follows:

*“**Tampering**” Altering for an improper purpose or in an improper way; bringing improper influence to bear, interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring.”*

41. In addition, the specific definitions of the ADR define Doping Control as follows:

*“**Doping Control**” All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings.”*

42. Article 3.1 of the ADR provides that WA shall have the burden of establishing that an Anti-Doping Rule Violation has occurred to the comfortable satisfaction of the Tribunal:

***“3.1 Burdens and Standards of Proof***

*World Athletics or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether World Athletics has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that 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. Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.”*

43. Article 3.2 of the ADR states that facts relating to an ADRV may be established by any reliable means, including admissions.

***“3.2. Methods of Establishing Facts and Presumptions***

*Facts related to Anti-Doping Rule Violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable at hearings in doping cases under these Anti-Doping Rules:*

(...)

*3.2.5 The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts, unless that Athlete or other Person establishes that the decision violated principles of natural justice.”*

44. Article 5.10.9 of the ADR states that proceedings may be brought against an athlete that obstructs or delays an investigation. Specifically, Article 5.10.9 states the following:

*“5.10.9 If an Athlete or other Person obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering or destroying any documentation or other information that may be relevant to the investigation), proceedings may be brought against them for violation of Rule 2.5 (Tampering or Attempted Tampering).”*

45. Article 10.3.1 of the ADR states the following with regards to the period of Ineligibility to be imposed for Other Anti-Doping Rules as Tampering:

*“10.3.1 For an Anti-Doping Rule Violation under Rule 2.3 or Rule 2.5 that is the Athlete or other Person's first anti-doping offence, the period of Ineligibility imposed shall be four years unless, in a case of failing to submit to Sample collection, the Athlete can establish that the commission of the Anti-Doping Rule Violation was not intentional (as defined in Rule 10.2.3), in which case the period of Ineligibility shall be two years.”*

46. In turn, Article 10.7.1 of the ADR establishes the period of Ineligibility for an ADRV that is the second anti-doping offence. Specifically, Article 10.7.1 ADR states that:

*“10.7.1 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.”*

47. Also, Article 10.7.4 of the ADR foresees Additional Rules for Certain Potential Multiple Offences:

*“10.7.4 Additional Rules for Certain Potential Multiple Offences:*

*a. For purposes of imposing sanctions under Rule 10.7, an Anti-Doping Rule Violation will only be considered a second Anti-Doping Rule Violation if the Integrity Unit can establish that the Athlete or other Person committed the second Anti-Doping Rule Violation after the Athlete or other Person received notice, or after the Integrity Unit made a reasonable attempt to give notice, of the first alleged Anti-Doping Rule Violation. If the Integrity Unit cannot establish this, the Anti-Doping Rule Violations shall be considered together as one single Anti-Doping Rule Violation for sanctioning purposes, and the sanction imposed shall be based on the Anti-Doping Rule Violation that carries the more severe sanction.”*

48. Finally, the new Article 10.9.3(c) of the ADR (ed. 2021) is also relevant and establishes the following regarding potential violation of Article 2.5 of the ADR (Tampering): *“[i]f the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1.”*:

## VI. POSITIONS OF THE PARTIES

49. The principal submissions of WA may be summarized as follows:

### AIU Brief

- The AIU, on behalf of WA, requests the Disciplinary Tribunal:
  - to rule that the Tribunal has jurisdiction to decide on the subject matter of this dispute.
  - to find that the Athlete has committed a second Anti-Doping Rule Violation of Tampering, pursuant to Article 2.5 of the 2019 IAAF Rules;
  - to impose a period of Ineligibility of four (4) years upon the Athlete for the Anti-Doping Rule Violation from 16 November 2022 to 15 November 2026;
  - to award World Athletics a significant contribution to its legal costs.
  
- The AIU maintains that the Athlete, after finding out she had tested positive for the presence of Trenbolone in her body, provided two contradictory explanations with regards to the source of her AAF. The Athlete argued that her AAF was due to the consumption of large quantities of meat in the days prior to the Sample collection on 17 October 2018.
  
- In support of the aforesaid, the AIU establishes that the Athlete, in her First Explanation dated 23 November 2018, stated that on 14 October 2018, she consumed approximately 200 grams of “meat cut (steak)” at the Picanha Grill restaurant; on 15 October 2018, “beef filet with vegetables”; on 16 October 2018, five “tacos al pastor” (marinated pork in chili sauce, with tortillas); and she always had “fruits and eggs” for breakfast. However, in the Athlete’s Reply before the Disciplinary Tribunal dated 28 March 2019, she explained that after being diagnosed with iron-deficiency anaemia- she ate on 14, 15 and 17 October 2018, beef liver for breakfast at Las Gueras restaurant; on 16 October 2018, five tacos al pastor; and on 14 October 2018, 200 grams of beef rump cap for lunch at the Picanha Grill with her friend Ms. Villegas.

- The AIU submits that due to such conflicting facts, the AIU conducted an investigation in an attempt to verify the Athlete's conflicting explanations. The investigation concluded that some documents submitted by the Athlete were forged and her explanations had been moulded around those documents, particularly:
  - The hospital report dated 4 September 2018 submitted in the Athlete's Reply before the Disciplinary Tribunal was forged; and
  - The receipts from the Picanha Grill restaurant dated 14 October 2018 also submitted in the Athlete's Reply before the Disciplinary Tribunal were forged because the restaurant had ceased operating several years beforehand.
- The AIU further notes that the Sole Arbitrator specifically acknowledged in the First Decision (para. 85) that “[t]he Athlete provided contradicting versions of events during the proceedings, which are themselves contradicted by the evidence provided, some of which was fabricated.”
- Additionally, the AIU stated that the Athlete, in the appeal proceedings before CAS, changed -once again- the set of facts regarding the meat she had eaten in the days prior to the Sample collection. In particular the AIU submits that the Athlete argued before CAS that she only consumed two tacos on 15 October 2018 and five tacos on 16 October 2018.
- Moreover, the AIU also establishes that the Athlete, during the polygraph assessment of Mr. Rodolfo Prado Pelayo dated 13 June 2019, also accepted the following:
  - That the medical evidence submitted before the Disciplinary Tribunal was fabricated, i.e. a diagnosis of anaemia in order to explain her sudden need to consume beef liver;
  - That she had asked her friend Ms. Villegas to provide false testimony to support her story of eating beef at the Picanha Grill restaurant;
  - And that she had provided false receipts from Las Gueras restaurant.

- In this sense, the AIU points out that the Athlete's above-mentioned admissions were acknowledged and recorded by the CAS Decision (paras. 45 and 81).

### The ADRV

- The AIU submits that, in accordance with Article 2.5 of the ADR, as well as bearing in mind the definitions set forth by the ADR for "Tampering" and "Doping Control", in the event an athlete is misleading and/or provides fraudulent information to an Anti-Doping Organisation or engages in fraudulent conduct to prevent normal procedures from occurring in the context of results management and/or hearings, such athlete is to be found responsible for committing a violation of Tampering pursuant to Article 2.5 of the ADR.
- Likewise, the AIU refers to the Articles 4.4.2(e) and 5.10.9 of the ADR, which mention specific examples of Tampering or Attempted Tampering.
- Additionally, the AIU maintains that the facts related to an ADRV may be established by any reliable means, including admissions, as provided for in Article 3.2 of the ADR.
- In light of the above, the AIU argued that the Athlete during the proceedings before CAS expressly and unequivocally admitted to deliberately misleading the Disciplinary Tribunal with respect to her explanations for the AAF and to submitting fabricated documents and procuring the false witness testimony of Ms. Villegas during the first instance proceedings.
- The AIU stated that, according to Article 3.2.5 of the ADR, the facts established by a decision of a court of professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete to whom the decision pertained of those facts.
- In support of the aforesaid, the AIU refers to the Athlete's admission before CAS, as established by the CAS Decision in paras. 45 and 81.
- Additionally, the AIU argued that, in accordance with the CAS jurisprudence, the submission of forged medical documents trespassed beyond the threshold of a legitimate defence and therefore, her conduct constitutes a Tampering violation (see



CAS 2015/A/3979 IAAF v. Athletics Kenya & Rita Jeptoo and SR/Adhocsport/140/2018 IAAF v. Jemima Jelagat Sumgong, para. 99). Moreover, the AIU stated that the Athlete's provision of false information and procurement of false witness testimony also constituted a Tampering violation (see SR/009/2020 World Athletics v. Wilson Kipsang Kiprotich, para. 256 and 257).

- In view of the foregoing, the AIU concluded that it is incontrovertible that the Athlete committed an ADRV under Article 2.5 of the ADR.

### Consequences

- The AIU argues that the period of Ineligibility shall be four (4) years pursuant to Article 10.3.1 of the ADR because this matter represents a violation of the Article 2.5 of the ADR.
- The AIU also maintains that the Athlete cannot benefit from the application of No Significant Fault or Negligence according to Article 10.5 of the ADR because the aforementioned provision is not applicable to violations of Article 2.5 of the ADR, pursuant the Comment to Article 10.5.2 of the WADA Code.
- Additionally, the AIU stated that the Athlete's violation of Tampering shall be considered a second ADRV in accordance with Article 10.7.4 of the ADR. In this sense, it is the AIU's position that the Athlete committed a second ADRV after she received notice of the first ADRV, as foreseen in the aforementioned provision.
- The AIU submits in its Brief that the period of Ineligibility applicable to the Athlete, according to the Article 10.7.1 of the ADR, shall be twice the period of Ineligibility that would be applicable to the second ADRV, i.e. four years. Therefore, this mandatory period of Ineligibility of four years shall be doubled to eight (8) years.
- Notwithstanding the aforesaid, during the hearing of the present case, the AIU acknowledged that a new and more favourable rule to the Athlete had been adopted in the 2021 version of the ADR by WA. The AIU considered that, in accordance with the principle of *lex mitior*, such provision shall be applicable to the present case.

- Specifically, Article 10.9.3(c) of the ADR (ed. 2021) establishes the following: *“[i]f the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1.”*
- Therefore, during the hearing, the AIU amended its request for relief and specified that the violation of Article 2.5 of the ADR constitutes a stand-alone First Violation pursuant to Article 10.9.3 (c) of the ADR (ed. 2021). Hence, the period of Ineligibility to be imposed in the matter at hand shall be four (4) years, instead of the eight (8) years requested in the Brief.
- Finally, the AIU establishes that, considering that the Athlete is already serving a period of Ineligibility of four years until 15 November 2022 for the first ADRV, as confirmed by the CAS Decision, the aforementioned period of Ineligibility of four years for the violation of Article 2.5 of the ADR shall run consecutively (rather than concurrently) to that period of Ineligibility. Thus, commencing on 16 November 2022 and expiring on 15 November 2026.

#### Athlete's Answer

- In her Answer to the AIU Brief, the Athlete requests that the Disciplinary Tribunal reject the AIU Brief.
- The Athlete states that after she won the gold medal in the 20km race walking event of the World Race Walking Team Championships in Taicang (China) on 5 May 2018, a persecution began against her, since she defeated the Chinese athletes in their own country and especially, because she ended the hegemony of Chinese athletes in 20km race walking.
- The Athlete also maintains that after obtaining the gold medal on 5 May 2018, anti-doping controls became more and more frequent. Specifically, she was tested on the

following dates: on 17 May 2019, on 29 May 2018, on 18 June 2018, on 25 June 2018, on 26 July 2018, on 17 October 2018 (positive result) and on 28 November 2018.

- Moreover, the Athlete alleges that there are circumstances in the race walk sport that affect the fair play and transparency, such as the fact that the vice-president of the Race Walk Division, the Italian Mr. Mauricio Damilano, and the national trainer of the Chinese team, Mr. Sandro Damiliano, are brothers.
- The Athlete states that when she was first notified of the AAF on 16 November 2018, the Anti-Doping Area of the *Comisión Nacional de Cultura Física y Deporte* (“**CONADE**”) and their methodologist, Mr. Daniel Moncayo Cervantes, helped her to write the First Explanation to the AIU, where she described the meals that she ate in the days before the taking of the Sample.
- The Athlete also stated that CONADE recommended that she hire her first lawyers, Mr. Victor Espinoza Martinez, and Mr. Luis Alfredo Jimenez Aguayo to advise her during the First Proceedings before the Disciplinary Tribunal.
- It is the Athlete’s submission that, as from the moment that the Athlete hired her first lawyers, they were the ones in charge of all the paperwork and documentation; particularly, of the Answer Brief dated on 28 March 2019 filed in the First Proceedings that was sent from the email of Mr. Espinoza without informing the Athlete and with the Athlete’s forged signature.
- In this sense, the Athlete establishes that the documents and the fabricated evidence filed in the First Proceedings were made by her first lawyers and never by herself. Furthermore, the Athlete declares that she was completely unaware of the existence of such documentation and the evidence attached to it; as a consequence, she concludes that she never had the intention of manipulating or lying during the First Proceedings.
- The Athlete also submits that she did not provide two contradictory sets of facts regarding her consumption of meat during the days before the Sample collection because the Answer Brief dated 28 March 2019 was unknown to her. In particular, the Athlete states that she was unaware of the content, evidence and documents contained in such submission.

- With regards to the AIU's private investigation provided by Mr. Arturo Colin (PENTAD Security Executive) in the First Proceedings that challenged the veracity of the medical record provided by the Athlete, the latter alleges that such investigation lacks any formal and legal elements to be considered a formal investigation with probative value. In this regard, the Athlete *inter alia* submitted that no registration of a company named PENTAD or a private investigator named Mr. Arturo Colin can be identified in the public database. The Athlete also stated that the investigation is an attack on Mexican national sovereignty as well as to the Athlete's fundamental rights. Thus, the Athlete concludes that the aforementioned investigation should be considered invalid.
- The Athlete, concerning the receipt issued by "Picanha Grill" restaurant dated 14 October 2018, stated that when she was notified of the AAF she contacted the restaurant and requested an invoice for the meal on 14 October 2018. The Athlete requested the invoice from Mr. Eduardo Tager Palos, owner of the restaurant, and he recognized in the previous hearing that he falsified the invoice and sent it directly to the Athlete's former lawyers who changed the information with another invoice issued for *Petróleos Mexicanos*. Therefore, the Athlete holds that she only requested the invoice, but she did not manipulate any document.
- The Athlete argued that she cannot be accused of a Tampering violation as per Article 2.5 of the ADR because such provision stipulates that the ADRV would be committed during "the doping control"; and the Doping Control finished when the First Charge was notified to the Athlete on 10 December 2018. The Athlete states that the facts and documents presented by her first lawyers were not presented during the Doping Control period, but before the Disciplinary Tribunal. The Athlete maintained that neither the Disciplinary Tribunal nor CAS are part of the "Doping Control", as defined in the ADR.
- Moreover, the Athlete also submits that, every athlete accused by the AIU shall have a minimal margin of error in their declarations, and the right to present arguments in their defense during investigations before the doping authorities.
- The Athlete submitted that the facts and documents based on which the AIU is proposing to sanction her have already been analysed and resolved previously by the Tribunal and CAS and therefore, the matter shall be considered as *res judicata*.

- Likewise, the Athlete establishes that the First Decision of the Disciplinary Tribunal and the CAS Decision have already sanctioned the events referenced by the AIU in these proceedings and hence, if the Disciplinary Tribunal sanctions them again, it would be considered as a violation of the principle of *non bis in idem*.

## VII. ISSUES

50. The issues that the Sole Arbitrator must determine in this case may be summarized as follows:

- Is the Sole Arbitrator comfortably satisfied that the Athlete has committed the ADRV at issue?
- If the answer to the first question is in the affirmative, what are the appropriate consequences?

## VIII. MERITS

51. The Sole Arbitrator now turns to the analysis of the arguments and evidence as put forward by the Parties. In doing so, the Sole Arbitrator has considered all of the allegations set forth and refers below only to those elements which are deemed pertinent to decide the matter at hand.

### A. The ADRV

52. In order to establish whether an ADRV has been committed, the AIU shall have the burden of establishing that such ADRV has occurred to the comfortable satisfaction of the Tribunal (Article 3.1 of the ADR). The AIU may establish this through any reliable means, as detailed in Article 3.2 of the ADR cited above.

53. The specific ADRV at issue here pertains to Tampering or Attempted Tampering with any part of Doping Control, pursuant to Article 2.5 of the ADR, which establishes the following:

*“Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness.”*

54. Considering the wording of Articles 2.5 of the ADR, the Sole Arbitrator considers necessary to breakdown the above-quoted provision:

- Tampering is defined by the ADR as *“[a]ltering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring.”*
- Doping Control is also defined by the ADR as *“[a]ll steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings.”*

55. In order to establish whether the aforementioned ADRV of Tampering has occurred, the Sole Arbitrator deems it necessary to determine: (1) whether the conduct of the Athlete may be qualified as Tampering within the meaning given to it in the ADR; and, if the answer to the first question is in the affirmative, (2) whether such conduct took place during the Doping Control process, as defined by the ADR.

56. With regards to the first point, i.e. whether the conduct of the Athlete may be qualified as Tampering, it shall be noted that the AIU submitted during these proceedings that Tampering can take place in a variety of circumstances including where an athlete is misleading and/or provides fraudulent information to an Anti-Doping Organisation or engages in fraudulent conduct to prevent normal procedures from occurring.

57. The AIU further stated that the Athlete’s conduct shall be considered as Tampering based *inter alia* on the following facts:

- a. The Athlete provided two contradictory sets of facts with regards to her consumption of meat in the days before the Sample collection: one in her First Explanation dated 23 November 2018 and another in the Athlete's Reply before the Disciplinary Tribunal dated 28 March 2019. The Athlete -again- changed her story with regards to the consumption of meat during the CAS proceedings.
- b. The hospital report dated 4 September 2018 submitted by the Athlete in her Athlete's Reply before the Disciplinary Tribunal was forged.
- c. The receipts from the Picanha Grill restaurant dated 14 October 2018 were also forged and the receipts from Las Gueras restaurant were false.
- d. The Athlete acknowledged that she had asked her friend, Ms. Villegas, to provide false testimony to support her story about eating beef at the Picanha Grill.

58. On the contrary, the Athlete argued that she never had the intention to manipulate evidence or to lie during the proceedings neither before the First Proceedings before the Disciplinary Tribunal, nor before CAS. Indeed, the Athlete discharged any possible responsibility on her first lawyers, who -according to the Athlete- did not disclose or inform her about any falsification or manipulation of documents and even forged her signature. Specifically, the Athlete pointed out that the Answer Brief filed before the Disciplinary Tribunal on 28 March 2019, as well as the evidence and exhibits submitted (including the hospital report and receipts from Picanha Grill and Las Gueras) were documents unknown to her at the time they were filed before the Disciplinary Tribunal.

59. In relation to the aforementioned disputed facts, the Sole Arbitrator finds the conclusions reached by both, the First Decision and the CAS Decision of the utmost relevance, since they are convincing and persuasive enough to conclude that the Athlete indeed lied and presented fabricated evidence during the First Proceedings.

60. Specifically, the Sole Arbitrator refers to the following findings stressed in the First Decision and in the CAS Decision:

#### First Decision

*“85. The Athlete’s explanation of how the prohibited substance entered in her system relates to the ingestion of meat. However, this explanation together with the evidence produced by the Athlete is not convincing. The Athlete provided contradicting versions of events during the proceedings, which are themselves contradicted by the evidence provided, some of which was fabricated. During the proceedings, the Sole Adjudicator appreciated certain elements that, even considered in isolation, were crucial to consider favourably the version of the Athlete. Considering them jointly with the evidence provided at the hearing leaves no doubt that the Athlete’s explanation is not reliable”.*

### CAS Decision

*“45. The Appellant stated that she genuinely and expressly accepts that she lied and presented and relied upon fabricated documents before the IAAF Disciplinary Tribunal. She explained that her former legal counsel explained to her that this was the only way to defend herself and that there was no other option for her. The Appellant expressed her sincere apologies and her regrets to the Respondent and to the Panel.”*

*“81. The Appellant admitted freely before the Panel, and in her Appeal Brief, that she had not told the truth at the hearing in first instance before the IAAF Disciplinary Tribunal, that her evidence had been falsified, and that documents and evidence were fabricated. The Appellant apologized for her conduct and for what she had said and done before the IAAF Disciplinary Tribunal but said that she was following advice for her then-legal team.”*

61. The Sole Arbitrator takes into consideration that, according to Article 3.2 of the ADR, “[f]acts related to Anti-Doping Rule Violations may be established by any reliable means, including admissions.”

62. Of significant relevance is Article 3.2.5 of the ADR that foresees that “facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete (...), unless that Athlete or other Person establishes that the decision violated principles of natural justice.”



63. In light of the aforesaid provisions of the ADR, it shall be concluded that the aforementioned facts established in the First Decision and the CAS Decision shall be treated as irrebuttable evidence that the Athlete indeed misled and provided fraudulent information and documentation during the First Proceedings before the Disciplinary Tribunal, as provided for in the definition of Tampering contained in the ADR.

64. In fact, the Sole Arbitrator finds further support to conclude the aforesaid in Article 5.10.9 of the ADR where it is expressly stated that “[i]f an Athlete (...) obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering or destroying any documentation or other information that may be relevant to the investigation), proceedings may be brought against them for violation of Article 2.5 (Tampering or Attempted Tampering).”

65. The Sole Arbitrator notes that, during the polygraph assessment of Rodolfo Prado Pelayo dated 13 June 2019, the Athlete admitted that she asked her friend Ms. Villegas to provide false testimony before the Disciplinary Tribunal in the First Proceedings, as well as the fact that she had not told the truth at the hearing of the First Proceedings.

66. In this regard, attention shall be drawn to the specific content of the Expert Opinion on polygraph assessment, which was submitted as an exhibit by the Athlete in her Appeal Brief in the CAS Proceedings. In the aforementioned Expert Opinion on polygraph assessment, it is *inter alia* stated the following:

- *“For example, she said that her participation consisted in: - Asking a friend (at the suggestion) to say that she had gone with her to eat liver - Asking the lawyers’ owners of a restaurant to say that she had certainly eaten liver with them (...);”*
- *“She never proposed any lying and only accepted and agreed to lie, because the lawyers convinced her that this was the only way to defend her, although she knew that lying would not help her at all.”*

67. If still there was any doubt, also during the hearing of the present proceedings, the Athlete candidly admitted again that (i) she asked her friend Ms. Villegas to provide false testimony before the Disciplinary Tribunal in the First Proceedings; and (ii) that she was

aware that some of the information that was provided to the Disciplinary Tribunal in the First Proceedings was untruthful.

68. The Athlete made it very clear that she was only following the advice and strategy designed by her lawyers that told her that this was the best way to defend her case, which is an implicit recognition of her knowledge and active participation in the deceptive defense of her case.

69. Based on those admissions, the Sole Arbitrator finds that the arguments presented by the Athlete in these proceedings alleging that she was unaware of the content, evidence and documents contained in her Answer Brief submitted before the Disciplinary Tribunal in the First Proceedings, are not convincing, and shall be therefore rejected.

70. Indeed, the Sole Arbitrator is persuaded that the Athlete was poorly advised by her previous lawyers but, in the same way, the Sole Arbitrator is also convinced that the Athlete was aware and accepted that untruthful information was presented before the Disciplinary Tribunal in the First Proceedings.

71. In this regard, the Sole Arbitrator remarks that an athlete cannot simply delegate her obligations to a third party and then not monitor or supervise such delegation without bearing any responsibility; such a finding would render meaningless the obligation of an athlete to present truthful information and reliable evidence by simply discharging all responsibility to such third parties (see *mutatis mutandi* CAS 2016/A/4643 Maria Sharapova v. ITF, para. 97(a) *in fine*).

72. Finally, the Sole Arbitrator concurs with the view expressed by the Panel in CAS 2015/A/3979 IAAF v. Athletics Kenya & Rita Jeptoo and the Sole Arbitrator in SR/Adhocsport/140/2018 IAAF v. Jemima Jelagat Sumgong. These decisions establish that any behavior of an athlete in a judicial proceeding before a first instance or appeal body must meet a high threshold in order to be qualified as Tampering, and while an athlete has the right to defend himself or herself and make submissions in support of any defence, submitting a forged document or committing perjury are circumstances that trespass beyond the threshold of a legitimate defence.

73. There shall be a limit between the Athlete's right to present arguments or submit evidence in her defence, and deliberately lie (or ask, like in the case at hand, a witness to lie for her) and/or submit fabricated evidence, even if following the advice of a counsel, when behind such conduct there is an intention to willingly deceive the judging authority.
74. In other words, and as concluded by the Sole Arbitrator in SR/009/2020 World Athletics v. Wilson Kipsang Kiprotich, where an athlete deliberately attempts to prevent the administration of justice and to improperly affect the outcome of the proceedings, his/her actions are sufficient to be considered as a Tampering violation.
75. Therefore, in light of the aforementioned considerations, the Sole Arbitrator concludes that the Athlete's conduct shall be qualified as Tampering pursuant to the definition established in the ADR.
76. Now that it has been established that the Athlete's conduct shall be considered as Tampering, the Sole Arbitrator turns his attention to the following issue at stake, i.e. whether such conduct took place during the Doping Control process, as defined by the ADR.
77. In this sense, the Athlete submitted in these proceedings that the Doping Control ended when the First Charge was notified to the Athlete on 10 December 2018. The Athlete states that the facts and documents presented by her first lawyers were not presented during the Doping Control process, but only before the Disciplinary Tribunal. The Athlete maintained that neither the Disciplinary Tribunal nor CAS are part of the "Doping Control", as defined in the ADR.
78. However, Doping Control is defined as "*[a]ll steps and processes from test distribution planning through to ultimate disposition of **any appeal** including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, **results management and hearings.***" (emphasis added).
79. Consequently, Tampering can also cover the Athlete's conduct in the course of a first instance or appeal hearing (see CAS 2015/O/4128 IAAF v. Rito Jeptoo), such as the First Proceedings before the Disciplinary Tribunal.

80. Therefore, the Sole Arbitrator concludes that the violation of Tampering took place during the Doping Control process, as defined by the ADR.
81. As a consequence, the Sole Arbitrator is comfortably satisfied that the Athlete has violated Article 2.5 of the ADR (Tampering or Attempted Tampering with any part of Doping Control).
82. Finally, it is also noted that the Athlete has briefly alleged that the facts and documents based on which the AIU is requesting a sanction have already been analysed and resolved by the Disciplinary Tribunal and CAS and therefore, the matter shall be considered as *res judicata*.
83. Likewise, the Athlete established that the First Decision of the Disciplinary Tribunal and the CAS Decision have already sanctioned the events referenced by the AIU in these proceedings and hence, if the Disciplinary Tribunal sanctions them again, it would be considered a violation of the principle *ne bis in idem*.
84. The Sole Arbitrator then turns his attention to the arguments set forth by the Athlete with regards to the alleged violation of the *res judicata* and *ne bis in idem* principles in the present proceedings.
85. In this sense, the Sole Arbitrator first refers to the well-established jurisprudence of CAS that has constantly established that “*the term res judicata refers to the general doctrine that an earlier and final adjudication by a court or arbitration tribunal is conclusive in subsequent proceedings involving the same subject matter or relief, the same legal grounds and the same parties (the so-called “triple-identity” criteria)*” (see CAS 2015/A/3959 CD Universidad Católica & Cruzados SADP v. Genoa Cricket and Football Club, para. 109).
86. However, contrary to the assertions of the Athlete, these proceedings involve a potential ADRV for Tampering under Article 2.5 of the ADR; on the other hand, the First Proceedings and the subsequent appeal to CAS were related to an ADRV under Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) and Article 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method) of the ADR. Therefore, it shall be concluded that both

proceedings relate to different subject matters, with both parties presenting different reliefs and legal arguments.

87. In fact, in the First Proceedings, the Athlete -mainly- presented arguments in order to discharge her burden of proving the source of *epitrenbolone* found in the Sample provided on 17 October 2018 with the aim of obtaining an elimination, or a reduction of, the period of Ineligibility. On the other hand, in these proceedings, the arguments of both parties were related to the conduct of the Athlete during the First Proceedings which could potentially be considered as Tampering, a completely different object at stake. Hence, the Sole Arbitrator concludes that the “triple-identity” criteria is not fulfilled in the present proceedings and as a consequence, no violation of the principle *res judicata* exists.

88. With regards to the alleged infringement of the *ne bis in idem* principle, as concluded by the Panel in CAS 2010/A/2139 Kauno Futbolo Ir Beisbolo Klubas v. FIFA (para. 17), “*the ne bis in idem principle means basically that no one shall be sanctioned twice because of the same offence*”.

89. Bearing the aforesaid into consideration, the Sole Arbitrator does not consider that imposing a sanction for Tampering would result in a violation of the principle of *ne bis in idem*. This is because, as noted *ut supra*, the First Decision did not deal with Tampering (Article 2.5 of the ADR) but with different offences, namely, the Presence of a Prohibited Substance or its Metabolites in an Athlete’s Sample (Article 2.1 of the ADR) and Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method (Article 2.2 of the ADR). In view of the above, the sanction imposed in the previous proceedings was based on completely different conduct from the Athlete than the one that is adjudicated in the present disciplinary proceedings and, hence, there is no risk of Double Jeopardy.

90. Taking into consideration the non-applicability of the *res judicata* and *ne bis in idem* principles to the present case, as well as the fact that the Athlete has been found responsible to have committed Tampering, as per Article 2.5 of the ADR, the Sole Arbitrator now turns to the potential consequences of such ADRV.

## **B. The Consequences of the ADRV**

91. Regarding the consequences of the ADRV, the Sole Arbitrator notes that the AIU firstly requested that a period of Ineligibility of eight (8) years should be imposed on the Athlete, in accordance with Articles 10.3.1 and 10.7.4 of the ADR, since the Athlete's violation of Tampering should be considered her second ADRV.
92. Notwithstanding the aforesaid, during the hearing of the present case, the AIU acknowledged that a new and more favorable rule to the Athlete had been adopted in the 2021 version of the ADR by WA after the Brief was filed before the Disciplinary Tribunal by the AIU.
93. Specifically, such new provision adopted by the 2021 version of the ADR is Article 10.9.3(c), which establishes the following: *"[i]f the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1."*
94. In light of the aforementioned provision, the violation of Article 2.5 of the ADR constitutes a stand-alone first violation. Hence, the period of Ineligibility to be imposed in the matter at hand would be four (4) years, instead of the eight (8) years as firstly requested in the AIU's Brief, pursuant to Articles 10.3.1 and 10.7.4 of the ADR.
95. In this sense, it is well-established CAS jurisprudence that when any new rule is more favorable for an athlete, such rule applies retroactively to facts that occurred prior to its entry into force, in accordance with the principle of *lex mitior* (see CAS 2015/A/4233 WADA v. Martin Johnsrud Sundby & FIS). This principle is indeed expressly referred to in the ADR under Article 21.3(iii), which states that *"the relevant tribunal may decide it appropriate to apply the principle of lex mitior in the circumstances of the case."*

96. Hence, Article 10.9.3(c) of the ADR (ed. 2021) shall be applicable to the present case; and particularly, to the period of Ineligibility applicable to the Athlete, in light of the principle of *lex mitior*.

97. As a consequence, the Sole Arbitrator concludes that following the application of Article 10.9.3(c) of the ADR (ed. 2021) to the present case, a violation of Article 2.5 of the ADR constitutes a stand-alone first violation and hence, the period of Ineligibility to be imposed in the matter at hand on the Athlete shall be four (4) years.

98. Finally, considering that the Athlete is already serving a period of Ineligibility of four (4) years until 15 November 2022 for the first ADRV, as confirmed by the CAS Decision, the new period of Ineligibility of four (4) years for the violation of Article 2.5 of the ADR shall run consecutively (rather than concurrently) to that period of Ineligibility pursuant to Article 10.9.3(c) of the ADR (ed. 2021).

99. Thus, a period of Ineligibility of four (4) years, for the violation of Article 2.5 of the ADR, shall commence on 16 November 2022 and expire on 15 November 2026.

## **IX. CONCLUSIONS**

100. Considering all of the above, the Sole Arbitrator concludes that the Athlete has infringed Article 2.5 of the ADR and as such, the Sole Arbitrator shall impose a period of Ineligibility of four (4) years on the Athlete, pursuant to Article 10.9.3(c) of the ADR (ed. 2021), which shall commence on 15 November 2022 and expire on 15 November 2026.

## **X. COSTS**

101. Article 8.9.3 of the ADR states:

*“The Disciplinary Tribunal has the power to make a costs order against any party where it is proportionate to do so. If it does not exercise that power, each party shall bear its own costs, legal, expert and otherwise. No recovery of costs shall be considered a basis*

*for reducing the period of Ineligibility or other sanction that would otherwise be applicable.”*

102. The Sole Arbitrator notes WA's request to be awarded a significant contribution of the legal costs of these proceedings. However, despite the fact that the Athlete is the unsuccessful party, the Sole Arbitrator is inclined to reject such request. Considering all the circumstances, the Sole Arbitrator does not consider this measure is justified. In particular, bearing in mind the period of Ineligibility of four (4) years imposed on the Athlete that will expire on 15 November 2026, as such sanction is sufficient punishment without the need to burden the Athlete with such a contribution.

## **XI. ORDER**

103. In light of the above, the Sole Arbitrator:

- Rules that the Disciplinary Tribunal has jurisdiction to decide on the subject matter of this dispute.
- Finds that the Athlete has committed an Anti-Doping Rule Violation pursuant to Article 2.5 of the ADR.
- Imposes a period of Ineligibility of four (4) years upon the Athlete, which shall run consecutively to the period of Ineligibility already imposed on the Athlete until 15 November 2022 for the violation of Articles 2.1 and 2.2 of the ADR. The period of Ineligibility of four (4) years for the violation of Article 2.5 of the ADR shall commence on 16 November 2022 and expire on 15 November 2026.
- Dismisses all other prayers for relief.



## XII. RIGHT TO APPEAL

104. This decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Article 13 ADR and its relevant subsection 13.2.1.

105. In accordance with Article 13.6 ADR parties shall have 30 days from receipt of this decision to lodge an appeal with the CAS.



Lucas Ferrer

Sole Arbitrator, Disciplinary Tribunal

Barcelona, Spain

30 July 2021

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